(33,800)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 491

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., APPELLANT,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE AND JOHN ARTHUR BROOKE

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. 1]

IN DISTRICT COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION TWO

No. 5532

London Guarantee and Accident Company, Ltd., Petitioner,

vs.

The Industrial Accident Commission of the State of California, Sarah Jane Brooke, and John Arthur Brooke, Respondents

Petition for Writ of Review

To the Honorable Presiding Justice and to the Associate Justices of the District Court of Appeal of the State of California, Second Appellate District:

Petitioner herein respectfully petitions the above entitled court for a writ of review and alleges the following facts:

I

Petitioner, London Guarantee and Accident Company, Ltd., is now and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of England, and authorized to do and doing a general insurance business in the United States of America and the State of California, with a branch office in the City of Los Angeles, State of California.

II

Petitioner at all times herein mentioned has been and now is the insurance carrier of the Morris Pleasure Fishing, Inc., a corporation.

III

That on the 8th day of April, 1926, John James Uttley [fol. 2] Brooke, an employee of Morris Pleasure Fishing, Inc., was drowned in the navigable waters of the Pacific

Ocean and thereafter on the 24th day of April, 1926, Sarah Jane Brooke and John Arthur Brooke duly and regularly filed with the respondent, Industrial Accident Commission of the State of California, their application for adjustment of claim for dependency against Morris Pleasure Fishing, Inc., on account of said death. That a copy of said application is hereto attached marked Exhibit "A," and made a part of this petition.

IV

That thereafter and on or about the 28th day of May, 1926, an order joining petitioner, London Guarantee and Accident Company, Ltd., as a party defendant in this proceeding, was made by respondent, Industrial Accident Commission of the State of California. That a copy of said order is hereto attached, marked Exhibit "B," and made a part of this petition.

V

That on or about the 2nd day of June, 1926, an answer to said application was filed by petitioner, London Guarantee and Accident Company, Ltd., for and on behalf of itself and Morris Pleasure Fishing, Inc., a copy of which answer is hereto attached, marked Exhibit "C," and made a part of this petition.

VI

That thereafter and on the 10th day of June, 1926, and the 13th day of September, 1926, hearings were held before the respondent, Industrial Accident Commission of the State of California; that thereafter, and on or about the 6th day of October, 1926, respondent Commission made and rendered in writing its findings and award, a copy of which is hereto attached, marked Exhibit "D," and made a part of this petition.

VII

That therein and thereby the said respondent Commission [fol. 3] found that Brooke while employed as a spare skipper sustained injury occurring in the course of and arising out of his employment, and that the injury was the proximate cause of his death; that at the time of his death he was not engaged in maritime employment. That respond-

ent Commission further found that his parents, Sarah Jane Brooke and John Arthur Brooke, were not wholly or partially dependent upon him for support; that the reasonable burial expense was in the sum of $150.00, and that an award should be and was made in this amount with interest at the rate of seven per cent. per annum until paid.

VIII

That thereafter petitioner, London Guarantee and Accident Company, Ltd., applied for a rehearing by said Commission, and on or about the 5th day of November, 1926, said respondent Commission, by its order in writing, denied petitioner's application for rehearing. That a copy of said petition for rehearing is hereto attached, marked Exhibit "E," and made a part of this petition. That a copy of said order denying petition for rehearing is hereto attached, marked Exhibit "F," and made a part of this petition.

IX

That the facts in the matter in question as shown by the evidence introduced at the hearings before the respondent, Industrial Accident Commission of the State of California, are as follows:

That the Morris Pleasure Fishing, Inc., a corporation, was incorporated for the sole purpose of operating and maintaining fishing vessels at the fishing banks of the Pacific Ocean, to be used by the public for deep sea fishing; that in conjunction therewith, said Morris Pleasure Fishing, Inc., operated and maintained several vessels ranging from four to fourteen tons registry, equipped with gas engines and capable of cruising a distance of five hundred miles, to carry and transport for hire, back and forth over the navigable waters of the Pacific Ocean, from the Santa [fol. 4] Monica Pier, Santa Monica, California, to their fishing vessels which navigated in and about the fishing banks several miles out in the Pacific Ocean, any and all persons desirous of deep sea fishing; that the vessel "W. K.," a seven ton registered vessel, equipped with a gas engine, was one of the fishing vessels which was at all times herein mentioned navigated under its own power in and about the fishing banks; that a charge of One Dollar

($1.00) was made to all persons desiring to make the morning deep sea fishing trip, and a charge of One Dollar and Fifty Cents ($1.50) was made to all persons desiring to make both the morning and afternoon deep sea fishing trips; that for these charges the public was entitled to fish from the fishing vessels such as the vessel "W. K."; to be transported to and from said fishing vessels, as aforesaid; and to be supplied with bait; that said Morris Pleasure Fishing, Inc., did not engage in any land enterprise or business, but on the contrary engaged solely in the maritime business aforesaid; that to carry out this maritime occupation or business, said Morris Pleasure Fishing, Inc., employed seamen to navigate their various vessels over the navigable waters of the Pacific Ocean; that John Brooke, the deceased, was employed by said company for the purpose of aiding in the navigation of these vessels back and forth, to and from the fishing vessels, which were navigated in and about the fishing banks several miles from shore; that said Brooke was an apprentice navigator and seaman; that he was employed to make trips daily to and from the fishing vessels located as aforesaid, over the navigable waters of the Pacific Ocean; that these duties constituted his contract of employment with the Morris Pleasure Fishing, Inc.; that at times Brooke would substitute as a "spare skipper" for one of the skippers and navigate one of the vessels on its trips to and from the fishing vessels navigating in and about the fishing banks as aforesaid; that on or about the 8th day [fol. 5] of April, 1926, the sea was running very high, with a severe storm raging; that while the vessel "W. K." was at anchor at one of the fishing banks, a distance of about one mile from said pier, the heavy sea broke the vessel "W. K." loose from its moorings and started it adrift in the direction of the Santa Monica Pier; that upon noticing that the "W. K." was adrift, the deceased, John James Uttley Brooke, and two other employees of Morris Pleasure Fishing, Inc. to-wit: Captain Thornton Morris and Leland Gregory, who were standing on the Santa Monica Pier, near the anchorage of the other vessels of that company, boarded one of said vessels, and put out to sea to rescue the "W. K." and navigate her to a safe anchorage; that after they had navigated to within a short distance of the "W. K.," a large comber or swell struck and capsized their vessel, throwing

them into the sea where all three men were drowned; that two more employees of the Morris Pleasure Fishing Inc., by the names of Duggan and Terresi, upon seeing the aforesaid vessel capsize and the three occupants thrown into the sea, started out in another vessel with life preservers, in an effort to save Morris, Brooke and Gregory; that due to their own vessel overturning and upsetting, they, Duggan and Terresi, were forced to swim back, with the aid of the life preservers, to save their own lives.

To sum up, the evidence introduced at the hearings showed that the Morris Pleasure Fishing, Inc., was engaged exclusively in maritime industry; the contract of Brooke called strictly for maritime labor. His entire employment consisted of a seaman's duties, and the place where the injury occurred was on navigable waters. He had no duties to perform on land.

X

That respondent, Industrial Accident Commission of the State of California acted without and in excess of its powers, in that in and by its decision herein rendered it [fol. 6] found that at the time of the alleged injury suffered by John James Uttley Brooke, he was working and engaged in non-maritime employment and that said Commission therefore had jurisdiction in this proceeding, while the evidence conclusively showed that petitioner was on navigable waters, under a maritime contract and engaged in maritime employment.

XI

That the decision and order of the respondent Commission herein was unreasonable in that:

1. Said Commission did not have jurisdiction in this proceeding;

2. That at the time of said injury, John James Uttley Brooke was working on navigable waters;

3. That at the time of said injury said Brooke was engaged in maritime employment.

4. That the subject matter of said Brooke's contract of employment was maritime;

5. That the nature and character of the work to be performed by Brooke under said contract was maritime;

6. That the injury received by Brooke was maritime;

7. The order and decision are not supported by the evidence.

XII

That the findings of fact made by respondent Commission do not support said order or decision in that:

1. Brooke's contract of employment was maritime;

2. His injury was maritime;

3. The subject matter of his contract of employment was maritime; and

4. The nature and character of the work to be done by him was maritime.

[fol. 7]

XIII

That no appeal lies from said order or decision of said Commission and your petitioner has no other plain, speedy or adequate or other remedy for the said unlawful and unreasonable action and decision of the respondent Commission in the premises, except the granting of a writ of review by this Honorable Court, and your petitioner does respectfully represent that it is just and proper and necessary to protect the interests of petitioner herein that a writ of review issue out of this court requiring the said respondent Commission to certify to this court that said order and decision, together with the record in the case, all the evidence introduced upon the hearings before said respondent Commission together with each and all of the records, papers, and files in said case and petitioner prays that this court thereupon review the said order and decision of the said respondent Commission and vacate, annul and set aside the said order and decision and that it be ordered, adjudged and decreed whether said despondent Commission has jurisdiction of this proceeding, and that the said Commission be ordered and directed to make its findings and award accordingly.

XIV

That this petition for writ of review is made to this Honorable Court for the reason that under the terms and provisions of the Workmen's Compensation, Insurance and Safety Act of the State of California, any party affected by the denial by the Industrial Accident Commission of an application for rehearing may apply to the Supreme Court of this State, or to the District Court of Appeal of the State of California, in the Appellate District in which such person resides, for a writ of certiorari, or review, for the purpose of having the lawfulness of the said order or decision on rehearing inquired into and determined. That your petitioner is a corporation of England, licensed to do and doing business in the State of California, with a branch [fol. 8] office in the Second Appellate District of the District Court of Appeal of the State of California.

Wherefore your petitioner makes application to this Court to grant your petitioner a writ of review requiring the said respondent Commission to certify fully to this court at a specified time and place, a transcript of the record and proceedings of said Commission to the end that said order be reviewed by this court and that upon review thereof such order be annulled and adjudged void and of no effect, and that it be ordered, adjudged and decreed that respondent Commission has not jurisdiction of this proceeding, and that it makes its decision accordingly.

W. E. Albright, Petitioner. E. R. Young, H. R. Kelly, and E. L. Williams, Attorneys for Petitioners.

[fols. 9-11] *Duly sworn to by W. E. Albright. Jurat omitted in printing.*

[fols. 12-30] EXHIBIT "B" TO PETITION

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. L. A. 6044

SARAH JANE BROOKE, JOHN ARTHUR BROOKE, Applicant-,

vs.

CAPTAIN MORRIS FISHING CO. and LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, Defendant-

Order Joining Parties Defendant

Good cause appearing therefore,

It is ordered that London Guarantee and Accident Company, Limited, be joined as a party defendant in the above-entitled cause.

Industrial Accident Commission of the State of California. John W. Carrigan, Commissioner.

Dated at Los Angeles, California, May 28, 1926.

Attest: G. M. Laird, Assistant Secretary.

Copies mailed to —— ——.

[fol. 31] IN DISTRICT COURT OF APPEAL OF CALIFORNIA

ORDER GRANTING WRIT OF REVIEW

By the COURT:

Petition for writ of review granted, returnable before this court Monday January 31, 1927.

Dated Jan. 7, 1927.

Works, P. J.

[fol. 32] In District Court of Appeal of California

[Title omitted]

Writ of Review—Filed Jan. 10, 1927

The People of the State of California to the Industrial Accident Commission of the State of California, Greeting:

Whereas, It has been made manifest to our District Court of Appeal by the affidavit of W. E. Albright, Claim Manager of Southern California Claim Department of London Guarantee and Accident Company, Ltd., the party beneficially interested, that in a certain action pending before you, against Morris Pleasure Fishing, Inc., and London Guarantee and Accident Company, Ltd., at the suit of Sarah Jane Brooke and John Arthur Brooke you, exercising judicial functions, have exceeded your jurisdiction, and that there is no appeal nor any other plain, speedy, and adequate remedy, and being therefore willing to be certified of the said action or proceedings,

We therefore command you, That you certify and send to our District Court of Appeal of the State of California, Division Two, at Los Angeles, for hearing Monday, January, 31, 1927, at 10 o'clock A. M. annexed to the writ a transcript of the record and proceeding in the action aforesaid, with all things touching the same as fully and entirely as it remains before you, by whatsoever names the parties may be called therein, that the same may be reviewed by our said District Court of Appeal, and that our said District Court of Appeal may further cause to be done thereupon what it may appear of right ought to be done.

Witness the Hon. Lewis R. Works, Presiding Justice of our District Court of Appeal, Division Two, at the Court Room in the City of Los Angeles, this 8th day of January, A. D. 1927.

H. C. Lillie, Clerk. M. C. Van Allen, Deputy Clerk.

[File endorsement omitted.]

[fol. 33] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. Claim No. 6044

SARAH JANE BROOKE and JOHN ARTHUR BROOKE, Applicants,

vs.

MORRIS PLEASURE FISHING, INC., and LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, Defendants

SECRETARY'S CERTIFICATE

I, F. B. Lord, Secretary of the Industrial Accident Commission, hereby certify that the attached is a full, true and correct copy of the record of proceedings had before the Industrial Accident Commission in the above entitled cause.

Attest my hand and the seal of the Industrial Accident Commission of the State of California.

F. B. Lord, Secretary. (Seal.)

Dated at San Francisco, California, this 26th day of January, 1927.

[fol. 34] BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF CALIFORNIA

San Francisco Office: State Building, Civic Center. Los Angeles Office: Sun Finance Building

Claim No. L. A. 6044

SARAH JANE BROOKE, (Address:) 1621 Ocean Front, Santa Monica, JOHN ARTHUR BROOKE, Applicant,

vs.

CAPTAIN MORRIS FISHING CO., Defendant, (Address:) Santa Monica Pier, L. A.

APPLICATION FOR ADJUSTMENT OF CLAIM—Filed Apr. 24, 1926

1. On (Date of injury:) April 8th, 1926, (Name of employee:) John James Uttley Brookes, while employed as a (Occupation at time of injury:) spare skipper at (City, town or place where injury occurred:) Santa Monica Pier,

California, by (Name of employer:) Captain Morris and Company, sustained injury arising out of and in the course of the employment; said injury being received in the following manner (Explain how injury was received): Drowned.

2. The parts of the body injured and subsequent results are: ——.

3. Employer's insurance carrier was (Name and address of insurance company:) —— ——.

4. Injured left work on (Date disability began:) —— ——, 192-, and disability continued to —— ——, 192-.

5. Last payment of indemnity on —— ——, 192-, last medical — furnished by employer on —— ——, 192-.

6. Medical or surgical treatment has been rendered by (Give name and address of all doctors who treated or examined and state whether furnished by employer or insurance carrier:) —— ——.

7. Age of employee was 19 years and the wage $140.00 per (Day, week or month:) month, working seven days per week. (If board, lodging, or other advantages were furnished by the employer and without charge, state what and market value of each:) ——.

To be Used in Death Cases Only

8. It is claimed that the deceased left the following named dependent: Name, Sarah Jane Brooke; age, 48 years; relationship, Mother; address, 1621 Ocean Front.

[fol. 35] 9. A question has arisen with respect to the liability of the employer or insurance carrier, and the general nature of the claim in controversy is: ——.

Wherefore it is requested that a time and place be fixed for hearing and notice given, and that an order or award be made granting such relief as the party or parties may be entitled to.

(Signature of applicant or applicants:) Sarah Jane Brooke, John Arthur Brooke. (Agent or attorney for applicant:) Monte Cly, (Address:) 6810 West Blvd.

Dated at Los Angeles this 24th day of April, 1926.

NOTE.—Under the provisions of the Workmen's Compensation, Insurance and Safety Laws, the Applicant need only state the general nature of the claim in controversy. When Application has been filled out and signed by Applicant it must be filed with or mailed to the nearest office of the Industrial Accident Commission without delay. Due notice will thereafter be given of the time and place of hearing. Either party may be represented in person, by attorney or other agent.

[fol. 36] [File endorsement omitted]

BEFORE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. Claim #6044

[Title omitted]

ANSWER—Filed June 2, 1926

Now comes the defendants, Morris Pleasure Fishing Inc., and the London Guarantee and Accident Co. Ltd., a corporation, Insurance Carrier, admit, allege and deny.

I

That at all times mentioned the London Guarantee and Accident Company Ltd. was Insurance Carrier for the Morris Pleasure Fishing Inc., and as such assumed the obligations of the California Workmen's Compensation, Insurance and Safety Act and its amendments, which might be imposed against the Morris Pleasure Fishing Inc., in the premises, notice of which has duly been given the attorney for the applicant, a copy of which is attached hereto marked "Exhibit A" herein specifically referred to and made a part thereof.

II

Said defendant, London Guarantee & Accident Co. Ltd., denies being the insurance carrier for Captain Morris Fishing Co.

III

Said defendants admit that upon April 8th, 1926, Jack Brooks was in the employ of Morris Pleasure Fishing Inc.

IV

Said defendants deny that the death of Jack Brooks arose through an accident arising out of and in the course of his employment with the said defendant which was subject to the terms and provisions of the California Workmen's Compensation Insurance and Safety Act and its amendments.

[fol. 37]

V

Said defendants allege that at the time of death, Jack Brooks, the decedent, was engaged in maritime employment and was subject to the terms and provisions of the Maritime Act or Admiralty Law and not the California Workmen's Compensation Insurance and Safety Act and its amendments.

VI

The said defendants allege that the Industrial Accident Commission of the State of California has no jurisdiction in this matter by reason of the maritime employment.

VII

Said defendants deny any and all liability in this matter under the California Workmen's Compensation Insurance and Safety Act and its amendments.

VIII

Wherefore the said defendants, the Morris Pleasure Fishing Inc., and the London Guarantee & Accident Co. Ltd., a corporation, insurance carrier, pray that the said applicants take nothing from the defendants and that the application for compensation benefits be dismissed.

W. E. Albright, for Defendants, Morris Pleasure Fishing, Inc., and London Guarantee & Accident Co., Ltd., a Corporation.

[fol. 38] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. Claim No. 6044

[Title omitted]

Report of Hearing—Filed July 7, 1926

This cause came on regularly for hearing on the 10th day of June, 1926, at 10:30 o'clock A. M., at the Chamber of Commerce Building, Long Beach, California, before Letus N. Crowell, Referee.

The applicants were neither present nor represented.

The defendants were represented by W. E. Albright, Esq., 510 H. W. Hellman Building, Los Angeles, California.

An answer was filed by defendants.

R. M. Marshall, reporter.

Case continued for further hearing to be set at Los Angeles, California, at the same time that the hearing is set for the Gregory vs. Morris, et al., L. A. #5988.

[File endorsement omitted.]

[fol. 39] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. Claim No. 6044

[Title omitted]

Report of Further Hearing—Filed Sept. 17, 1926

This cause came on regularly for hearing on September 13, 1926, at 3:30 o'clock P. M., at 911 Sun Finance Building, Los Angeles, California, before Letus N. Crowell, Referee.

Present:

Applicants Sarah Jane Brooke and John Arthur Brooke present in person; address, 1673 Ocean Avenue, Santa Monica California. Applicants represented by Attorney Robert E. Shippey, 409 Hibernian Building, Los Angeles, Cali-

fornia. (Entering late for Gregory case, during testimony of its first witness.)

Defendants represented by W. E. Albright, Adjuster, 510 H. W. Hellman Building, Los Angeles, California.

Mary Beck, Reporter.

STIPULATION RE EVIDENCE, ETC.

Whereupon the following proceedings were had, to-wit:

Referee: Stipulated and agreed by and between the parties hereto that the testimony in the case entitled Mrs. Jennie Gregory et al. vs. Captain Morris Fishing Co. and London Guarantee & Accident Company, L. A. No. 5986, given by witness Mr. Morris, and witness Mr. Dugan, may be considered as evidence and testimony in the above entitled case. It is hereby further stipulated that:

[fol. 40] Stipulations

1. That John James Uttley Brooke, hereinafter called the employee, was, on the 8th day of April, 1926, at Santa Monica, California, in the employment of defendant Morris Pleasure Fishing, Inc., hereinafter called the employer, as a spare skipper, and at said time the employee's age was 19 years.

2. That at said time the Defendant London Guarantee & Accident Company, Ltd., was the insurance carrier for the employer and is liable for the normal compensation if any which the employer is liable to pay.

3. That no medical treatment was rendered.

4. That the employer had notice and knowledge of the assertion of claim of injury and death as defined by Section 15 of the Workmen's Compensation, Insurance and Safety Act of 1917 and the Amendments thereto.

5. That at said time the actual monthly earnings of the employee were $140.00, and that the average weekly earnings may be computed upon that basis. (See order and additional issue, Page 3.)

6. That no death benefit has been paid.

7. That $150.00 on the burial expense of the employee has been incurred with the Undertaker Mendenhall, whose address is 4th Street, Santa Monica, California, and the same has not been paid.

Issues

The issues in this case are:

1. Has this Commission jurisdiction in this proceeding, to-wit, was the employment maritime?

2. Was the employee injured?

3. If the employee was injured, did said injury arise out of and in the course of said employment, was it proximately caused thereby, and did it occur while the employee was performing service growing out of and incidental to the same?

[fol. 41] 4. Was said death proximately caused by any injury or injuries arising out of the employment?

5. Dependency.

6. (See order on Page 3.) What were wages of employe at time of injury?

Referee: Good cause appearing therefor:

It is ordered that the name appearing as Captain Morris Fishing Company be and the same is hereby amended to read "Morris Pleasure Fishing, Inc."

Witnesses:

Mrs. Sarah Jane Brooke, Applicant.
John Arthur Brooke, Applicant.
Captain Clifford A. Morris, by Def.
Recalled, Mrs. Sarah Jane Brooke, by Def.
John T. Dugan, by Def.
(And see Order re witnesses in Gregory case, to be considered here.)

It is ordered that the stipulation in regard to the earnings of the employee at the time of said injury be cancelled and stricken from the record, and an additional issue made as to what the wages of the employee were at the time of the injury.

(Reporter's Note.—So changed at this time.)

Case submitted.

[fol. 42] L. A. No. 6044

Sarah Jane Brooke & John Arthur Brooke

vs.

London Guarantee & Accident Company, Ltd.

Transcript of Testimony

Sworn as witness and testifying as follows: Mrs. Sarah Jane Brooke, applicant, 1673 Ocean Avenue, Santa Monica, California:

Examination by Referee:

Q. What relation, if any, did you bear to John James Uttley Brooke?

A. My son.

Q. On April 8, 1926?

A. He was my son, and I am his mother.

Q. Is your husband living?

A. Yes, he is my second husband.

Q. Is your second husband living?

A. Yes, Mr. Brooke is my second husband; Mr. Okew, O-K-E-W, was my former husband before he died. He was the father of my boy, the former husband.

Q. Were you and your husband living together on April 8, 1926?

A. Yes.

Q. What is your second husband's business?

A. We have been in the apartment house business.

Q. Examine, Mr. Shippey.

Examination by Attorney Shippey:

Q. What were the earnings of your son from his connection with the Morris Pleasure Fishing Company, Incorporated?

A. When he started to work for the fishing company at first, he started at $80.00 a month and from then on he kept getting a little bit more, and promise of a little bit more, and Captain Morris told him on the pier, in February, that he had planned that Paul, as they called him down on the wharf, $140.00 or $130.00. He was going to give him [fol. 43] a license to run a boat of his own, said he was going to give him a license, and he told him he was sorry that things were so bad in the winter he couldn't pay them the full money, but just enough to get by for the winter, but that when spring came, he would make up their full wages.

Q. Were you dependent on the wages of your son for support, from the earnings with the fishing company?

A. In several ways. Mr. Brooke wasn't working, and when we gave up our apartment house business we had lost our apartment house through the slow times in Los Angeles, and we were looking to Jack for a living.

Q. When did you lose your apartment house?

A. July, 1925, practically lost it, didn't completely lose it.

Q. What proportion of his earnings was your son giving to you?

A. Whatever he could give me, sometimes he would give me $5.00, sometimes he would give me $10.00, because if he didn't give it I would say "Can't you give me more?" and he said "No, Captain doesn't want to give us anything unless it is by check, and I don't like to ask him unless it is coming payday."

Q. Was your son receiving a stated salary every week or month?

A. No, there is no particular time on salaries.

Q. Did he get any particular salary during the winter?

A. No, he didn't get any particular salary, only the one time he got $30.00 for three months, a check for $30.00.

Q. As I understand it, and from what you understood from Captain Morris from your son, any money over the amount he did get was to be paid to him in the spring?

[fol. 44] A. Absolutely.

Q. In other words, the amount of money he didn't receive, over and above the amount he did receive, was to accrue to him and be paid when business improved?

A. Yes, those were Captain Morris' own words.

Q. Did you see your son April 8th?

A. Yes.

Q. About what time of the day did you see him?

A. About half an hour before they brought in the news he was drowned.

Q. What time was that?

A. Between twelve-thirty and one-thirty; I wouldn't want to say exact.

Q. In the afternoon?

A. No, just about noontime.

Q. Had he gone to work that morning?

A. Yes.

Q. And he came home for his lunch?

A. No, he didn't come home to lunch that day at all. We were in the stand on the Front, 1621 Ocean Front, in the concession at the time, I give the address on that paper, and Cummings came in and said "Mother, I want a package of cigarettes," and when I said "That breeze is rough this morning," he left me and I never saw him again.

Q. Where did he go after he left your place?

A. Right out on the pier. I watched as far as I could see him.

Q. Was it his intention when he left you to go back to his work?

A. He was on the pier with that intention, no doubt.

[fol. 45] Q. How much of his time was he devoting to the Morris Pleasure Fishing Company?

A. How many hours a day?

Q. No, did he work every day for the company?

A. Yes, he didn't lost any time at all.

Q. He was not employed by anyone else?

A. No, sir.

Q. Was his body recovered?

A. Three or four days after, Sunday morning.

Q. I guess that is all.

Referee: Examine, Mr. Albright.

Examination by Mr. Albright:

Q. Where did you live on April 8th?

A. In Ocean Front, Santa Monica, 1621 Ocean Front.

Q. Where did Jack, or Paul, live at that time?

A. He was staying with Mrs. Hudling at that time.

Q. What is her address?

A. It is on Fairfax Avenue, but I couldn't give the number by heart. I think they call it the Gilmore Ranch.

Q. He didn't live at your house then?

A. Not at that time before the accident. Before we took that little place on Ocean Front we were living in Los Angeles, and it was too far for Paul to come to Los Angeles every night, because he had to get there for the four o'clock boat, or whatever time they go out, but Chet (this boy that runs one of the boats) him and Chet were pals, and they asked him to stay with them. He was staying—practically coming home, and there. He had some of his meals with them and slept with them, and sometimes he came home and had his meals and slept with us.

[fol. 46] Q. When did you move to Santa Monica?

A. April 19, 1925. We took that stand at that time.

Q. How did you know he received $140.00 a month?

A. That he didn't receive it? How do I know that he didn't receive it?

Q. You testified he received $140.00 a month.

A. No, I said Captain said he was going to pay him from a hundred and forty to a hundred and fifty—that he started at eighty dollars a month, but that he was going to give him that amount.

Q. What was your understanding as to his wage at the time he was drowned?

A. I figured just like I say now, the Captain or whoever would be left would look after the thing.

Q. Just answer, what amount did you understand he was earning when he was drowned?

A. One hundred dollars a month. He climbed from eighty to a hundred dollars, and the Captain had told him he was going to give him from one hundred and forty to a hundred and fifty.

Q. Did you have concession on Santa Monica Pier or in Santa Monica?

A. Right on the ocean there, 1621.

Q. What kind of concession was that?

A. A hot-dog stand, just a little stand.

Q. Where you in that business alone, or was——

A. Mr. Brooke was with me.

Q. What was the approximate income from that business?

A. Well, on the average, sometimes it would earn $7.00 a day, sometimes $10.00—not much more than that. We would have a good day when we had that.

Q. While you had this concession stand you also ran an apartment house?

[fol. 47] A. No, we gave up our apartment house a year ago last July, 1925.

Q. And the only business you and Mr. Brooke were engaged in at that time was this concession?

A. Yes.

Q. How often did Paul, or John Brooke, give you any money?

A. Not very often, because he hadn't got it. I had to pay his doctor bill. I had to pay his little clubs and lodges he had, because he couldn't get his money to pay it with, and I understand that when he was drowned, that Mrs. Hudling came to me and asked about the bill that he owed her, and she said that she knew that Paul hadn't gotten his money, or he would have paid her, because he owed her $77.00 when he was drowned, and the boys on the pier made up a collection and paid his bill because he hadn't gotten his money.

Q. How much did he give you in the year preceding his death?

A. Altogether?

Q. Yes.

A. I haven't kept track, sometimes $10.00, sometimes $5.00, sometimes $15.00, and a year ago he gave me $15.00. It just happened to be on my birthday, and he gave me $15.00 then. It was all he could get.

Q. He gave you $15.00 on your birthday?

A. Yes, that was a year ago this August. That was the highest I have ever had from him all at once.

Q. When did he next give you any money?

A. I don't just remember the time, I came down on the pier one day and I asked him if he had any, and he said he hadn't, but he said "Here is one dollar, Mother, if that will help you out some."

Q. When was that?

A. Maybe it would be a month or six weeks after that. [fol. 48] I don't know just when, but I have had awful little from him the last six months previous to his death.

Q. How much would you say you received from him?

A. Perhaps fifty dollars.

Q. You feel that the Morris Pleasure Fishing, Incorporated, owe him, or you, any back salary?

A. I certainly do, and I don't think I am the only one that feels that way.

Q. You understand that his salary was $80.00 a month when he was drowned?

A. I was absolutely sure from when he started on the boat.

(Interruption by Attorney Shippey:) The question was "You understand that his salary was $80.00 a month when he was drowned."

A. No, when he started. $100.00 was what he got when he was drowned, but the Captain promised him one hundred and forty, one hundred and fifty when he got on his boat, and he had the license in his pocket when he went and was drowned.

Q. $80.00 a month?

A. $100.00 a month when he was drowned.

Q. You believe as to back salary—did you bring this question of back salary before the Labor Commission?

Attorney Shippey: I don't see where that is material here.

Referee: Neither do I.

Mr. Albright: That is all.

Examination by Attorney Shippey:

Q. Was your son married?

[fol. 49] A. No.

Q. Was he supporting any person other than yourself?

A. No.

Q. This seven dollars, ten dollars, a day, that you say you made by this concession, was that net, or gross?

A. That was net, of course.

Q. You would make $7.00, and $10.00, after all the bills were paid?

A. Well, of course, on top of—we had the rent to pay out of that, but that is the amount taken one day with another, the whole stand—I was behind with my rent, at the time he was drowned.

Q. How much rent did you pay there?

A. Fifty dollars a month. I was behind when Jack was drowned.

Q. I think that is all. Anything further?

The Referee:

Q. You say you paid some of the bills of your son?

A. Yes, his doctor bill, $20.00.

Examination by Referee:

Q. When did you pay that?

A. Some time in December, was it, to Doctor—Captain Morris took him to the doctor at the time he broke his arm.

Man in the hearing-room named Dugan, answers: Dr. Darchern.

Q. What other amounts did you pay on behalf of your son?

A. I was paying his lodge dues, couldn't keep them going.

Q. How much did the lodge dues come to?

A. $5.00 a month.

Q. What other amounts did you pay on his behalf?

A. As far as buying—I tried to do what I could to help [fol. 50] him get some clothes, terrible, to keep him respectable on the pier.

Q. Did you buy clothes for him?

A. I certainly did, because he didn't seem to have anything to buy anything with, and I knew he wasn't spending it, because he didn't go out anywhere to spend it.

Q. When did you buy him anything?

A. In March I bought him socks and handkerchiefs.

Q. How much did they cost?

A. It all depends on the kind I was getting, fifty cents a pair for his socks, handkerchiefs.

Q. Just prior to April 8th, 1926, how much did you pay a month, do you think, on behalf of your son, taking everything?

A. I figured like this—that really, the money that I paid and the money I should have got from him to keep the other things going, I can't give any definite figure of what it would come to, because there were lots of things I had to just neglect. If he wasn't making enough to pay the rent of the Front, I couldn't do so.

Q. Did he pay you anything back to pay you for the money you expended on him?

A. He never did. He would always say how sorry he was that he couldn't get any more.

Q. Was he living with you on April 8th, 1926?

A. No, sir.

Q. Was he living——

A. He was living with Mrs. Hudling, he was just running between the two of us, one day he would come to home and the next day go to stay with them.

Q. Taking the difference between what you have expended on behalf of your son and what he give you, how much do you think the balance was that he should have paid you to make it even on what you had paid him?

[fol. 51] A. Of course I feel just like any other mother would, after you bring him up to twenty-two years old, there would have been nothing too much for me to expect from him, after putting him through school. Any money he got outside of his little spending money he was always so willing to give it to us to make things pleasant for us.

Q. Did he give you any money in April, 1926?

A. No, sir, I paid his dues before the first of April.

Q. Did he give you anything in March?

A. I don't remember the time when he did give me anything. I don't remember the date he gave me, or month.

Q. What amount, take the months of January, February, March and April, 1926, those months in which you bought him clothes, and paid his dues. Would the amount that you paid on his behalf be greater than the amount he gave you?

A. I should say, yes, I should say, and speaking truthfully, too.

Q. Was this money that was given, given to you or given to your husband, Mr. Brooke?

A. From my boy? To me, personally, in my own hands.

Q. Do you know whether or not he gave any money to your husband?

A. No, I don't think he did. You never received any money from him, did you?

Q. Was your son the son of Mr. Brooke?

A. No, the son of Mr. Okew.

Q. Your first husband?

A. Yes, he was born in Winnipeg, Canada, twenty years ago today.

Witness leaves stand.

[fol. 52] Sworn as witness and testifying as follows, called by applicants, JOHN ARTHUR BROOKE, party applicant:

Mrs. Brooke: You will have to speak a little loud, because he is hard of hearing.

Examination by Referee:

Q. What is your address?

A. 1623 Ocean Avenue.

The Referee: Examine, Mr. Shippey.

Examination by Attorney Shippey:

Q. You are the husband of Sarah Jane Brooke, who just testified in this matter?

A. Yes.

Q. And John James Brooke is your stepson?

A. Yes.

Q. A son of your wife's former husband?

A. Yes.

Q. You were supported by him in any way?

A. Well, yes, we had to be dependent upon him to a certain extent.

Q. What had you been doing for the year prior to the eighth of April, 1926?

A. I had been helping Mrs. Brooke in apartment houses.
Q. And what doing?
A. Well, the usual work around.
Q. You were working in apartment houses?
A. Working around them.
Q. And on the 8th of April, 1926, what were you doing?
A. I was down on Ocean Front, on the stand with Mrs. Brooke.
[fol. 53] Q. What were your average daily net earnings from that stand?
A. Truthfully speaking, I did not take the accounts in hand. Mrs. Brooke handled all those accounts, therefore I know nothing about them.
Q. Did you ever have any talk with your stepson as to the amount of money he was earning with the Morris Pleasure Fishing Company?
A. I never spoke much to Jack that way, only guiding him. But I remember the morning he was drowned. He used to come in there, and say "How are you, better"? And I would say "I am all right, you watch yourself," and on the morning of the 8th he came in he was——

The Referee: What are you trying to do now? Trying to determine whether the man is entitled to the wages? This is not the Wage Commission or the Labor Commission, this is the Industrial Accident Commission. The evidence in regard to what he might be able to collect as wages is immaterial in this case.
Mr. Shippey: I will not proceed further along that line.

The Referee:

Q. Did your stepson give you any money?
A. Never gave me none, no. I never asked him for any. I left it all for his mother. It was his mother and the boy's jack. I never interfered.

Examination by Mr. Albright:

Q. You testified that you were dependent upon John Uttley Brooke?
A. Yes, to an extent.
Q. To what extent?
A. Because we had to, to make ends meet.

Q. Did he contribute anything to you?

[fol. 54] A. Well, I won't say the amount, but I know his mother said "We will get a dollar or two out of him." Any more than that I didn't——

Q. Do you know of your own knowledge that he ever contributed anything?

A. Yes, he did.

Q. When?

A. I can't say as to the date.

Q. What amount?

A. I couldn't say as to the amount.

The Referee: Anything further?

Attorney Shippey: That is all, as far as we are concerned. I assume it isn't necessary to go further into the accident itself?

The Referee: At a hearing in Long Beach, we went into the cause of this man getting drowned. You see that the testimony given by Captain Morris and this other witness would be considered as evidence in this case. That is all right as far as it went, but I am fearful it might not apply to this particular man himself, so I would like a little testimony along that line as to what part Brooke was playing or doing at the time he was drowned. You haven't been sworn in this case?

Called by defendants, sworn as witness, and testifying as follows, Captain Clifford A. Morris:

Examination by Referee:

Q. What connection did you have with the Morris Pleasure Fishing Company on April 8th, 1926?

A. Boat operator.

Q. Did you know Mr. Brooke—John James Uttley Brooke?

A. Yes.

[fol. 55] Q. What became of him?

A. Drowned, April the 8th.

Q. Did you see him get drowned?

A. No, sir.

Q. What was he doing at the time he got drowned?

A. Trying to rescue a boat from going ashore to destruction.

Q. Was this the same boat that Mr. Gregory was trying to rescue?

A. Yes.

Q. And Brooke was in that crowd with you and the——

A. Yes.

Q. Others going out to rescue the boat?

A. With Captain Morris and Gregory and all.

The Referee: Examine, Mr. Shippey.

Examination by Attorney Shippey:

Q. Who owned this boat that was adrift?

A. She was owned by the Morris Pleasure Fishing Company, Incorporated.

Q. The company that employed Mr. Paul Brooke?

A. Yes.

Q. On this particular morning in question, the 8th of April, did Paul Brooke go out to this boat for the purpose of keeping it from drifting ashore?

A. I didn't—as I stated before, I didn't see the accident myself, but I understood that he went out there.

Q. Were you on the pier when they started?

A. No.

Q. Where were you?

A. I was in San Pedro.

[fol. 56] Q. You know nothing, then, about the accident whatever?

A. Only hearsay.

Q. Except what you heard? You do know, as a matter of fact, however, that John James Brooke was employed by the Morris Pleasure Fishing Company?

A. He was employed as apprentice.

Mr. Shippey: That is all.

Examination by Mr. Albright:

Q. What was Mr. Brooke's salary?

A. Sixty dollars a month.

Q. How was he paid?

A. At the end of every month, as far as I knew. He might have drawn money in between times, they usually draw four dollars or five dollars or ten dollars when they need it.

Mr. Albright: That is all.

Examination by Attorney Shippey:

Q. How do you know his salary was $60.00 a month?
A. We have the blank checks that were paid.
Q. That is the only reason?
A. I understood that—I generally hear of the agreements between the boys and the manager of the company down there.
Q. Was Captain Morris that was drowned any relation to you?
A. Cousin.
Q. It is possible, though, is it not, that there might have been some different arrangement between your cousin and John Brooke as to his salary?
A. No, sir, I don't think so.
Q. What makes you think that that was not so?

[fol. 57] The Referee: It was stipulated in this case that the earnings were $140.00 a month, and that the average weekly earnings may be computed upon that basis. If you are not going to abide by that stipulation we will withdraw the stipulation and take evidence upon what the wages were.

Mr. Shippey: I am satisfied.

Mr. Albright: I will withdraw the stipulation. I didn't know that there was a stipulation there.

The Referee: It is stipulated that the stipulation in regard to the earnings of the employee at the time of said injury be cancelled and stricken from the record, and an additional issue made as to what the wages of the employee were at the time of the injury.

Mr. Shippey:

Q. You say it is not possible that some other arrangement other than that of sixty dollars a month might have been made between Captain Morris and John Brooke?
A. Down there the business is done practically in four or five summer months, and after October the first it drops

off to practically nothing. The business goes behind and usually on the first of October we are called together and our wages are set according to the business we have done the year before. It is usually a big pot. Sometimes the wages are cut into for the winter months. I will have to do the same right now.

The Referee: What was Brooke's wages in April, 1926? What wages was he working for then?

A. I believe they were either eighty or ninety dollars, I wouldn't be certain.

[fol. 58] Mr. Shipley: Might it have been as much as a hundred dollars?

A. I don't think so.

Q. You say he was an apprentice?

A. Yes.

Q. How long had he been working?

A. He had been working there for a year, he hadn't any license, he couldn't get any license. We had his application made out and we were going to go over and get his license so he could run a boat.

Q. Isn't it a fact that upon a number of occasions he did run a boat?

A. He ran a boat with me aboard with a license, he didn't run the boat, I ran her, he was with me.

Q. Who handled the manual operation of the boat itself?

A. Sometimes he did and sometimes I did, but she was under my orders.

Mr. Shippey: That is all.

Mr. Albright: Are you director and officer of the company?

A. I made a statement that I hadn't any, I forgot that I was a director, but the company was so small I didn't remember that.

Q. Did you own any of the stock?

A. Yes.

Q. How much?

A. One-fourth of it, approximately.

Witness leaves the stand.

[fol. 59] Recalled as witness, Mrs. SARAH JANE BROOKE, party applicant:

By Attorney Albright:

Q. Did I understand you to say you paid a doctor bill?
A. Yes, $20.00, he broke his arm.
Q. That wasn't in connection with the accident?
A. No, it wasn't on the boat, he broke it with the car.

Attorney Shippey: I understood it was not connected with this accident, because I anticipate from what I gather from this case that there wasn't any necessity for a doctor after the accident. Is that all?

Adjuster Albright: Yes, except for the Referee.

The Referee: Who saw that accident?

Mr. Albright: John Dugan.

Sworn as witness and testifying as follows: (Called by defendants) JOHN P. DUGAN, 607 Euclid Avenue, Santa Monica:

The Referee:

Q. Was Mr. Brooke in your crew that went out to rescue this boat?
A. Yes.
Q. Was he in the same category as Mr. Gregory?
A. Yes.
Q. Was he in that crowd when the Captain told them "Come on, boys, let us go out and save that boat?"

The Referee: That is all.

Mr. Shipley: Nothing as far as we are concerned.

The Referee: Case submitted.

End of transcript.

[fol. 60] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim No. L. A. 6044

[Title omitted]

SECRETARY'S CERTIFICATE

I, F. B. Lord, Secretary of the Industrial Accident Commission, hereby certify that the attached is a full, true and correct copy of the testimony in the case entitled Mrs. Jennie Gregory et al. vs. Captain Morris Fishing Company and London Guarantee and Accident Company, L. A. 5986, as had on the 13th day of September, 1926, same being the testimony which was stipulated and agreed between the parties to be considered as evidence and testimony in the above entitled case.

Attest my hand and the seal of the Industrial Accident Commission of the State of California.

F. B. Lord, Secretary. (Seal.)

Dated at San Francisco, California, this 27th day of January, 1927.

[File endorsement omitted]

[fol. 61] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. Claim No. 5986

Mrs. JENNIE GREGORY and LENA GREGORY and JOE YORBA, Minors, by Their Guardian ad Litem, JENNIE GREGORY Applicant,

vs.

MORRIS PLEASURE FISHING, INC., and LONDON GUARANTEE AND ACCIDENT COMPANY, LIMITED, Defendants

Report of Hearing—Filed Jan. 27, 1927

This cause came on regularly for hearing on the 10th day of June, 1926, at 10:30 o'clock A. M., at the Chamber of

Commerce Building, Long Beach, California, before Lætus N. Crowell, Referee.

The applicant, Mrs. Jennie Gregory, was present in person, address 559 Sepulveda St., San Pedro, California, and represented the minors.

The defendants were represented by W. E. Albright, Esq., 510 H. W. Hellman Building, Los Angeles, California.

Answer filed by defendants.

R. M. Marshall, reporter.

Good cause appearing therefor, it is hereby ordered that Lena Gregory and Joe Yorba be and they are hereby joined as parties applicant in the above entitled proceedings.

Good cause appearing therefor, it is hereby ordered that Mrs. Jennie Gregory be and she is hereby appointed guardian ad litem of, for and on behalf of said Lena Gregory and Joe Yorba, minors.

[fol. 62] Good cause appearing, it is hereby ordered that the name appearing as Captain Morris Fishing Company be and the same is hereby amended to read "Morris Pleasure Fishing, Inc." wherever the same appears in this proceeding.

STIPULATION AS TO FACTS

It is hereby stipulated by and between the parties hereto:

1. That the defendant London Guarantee and Accident Company was the insurance carrier for the defendant Morris Pleasure Fishing, Inc., on April 8, 1926, and is liable for the normal compensation, if any, which the said Morris Pleasure Fishing, Inc. is liable to pay under the Workmen's Compensation, Insurance and Safety Act of 1917, and the amendments thereto.

2. That Leland Gregory, hereinafter called the employee, was on the 8th day of April, 1926, in the employment of defendant Morris Pleasure Fishing, Inc.

3. That no medical treatment was rendered.

4. That at said time the actual monthly earnings of the employee were $250, and that the average weekly earnings

may be computed upon that basis, and at said time the employee's age was 35 years.

5. That no death benefit or disability compensation has been paid.

6. That the death of the employee occurred on April 8, 1926.

7. That over $150 on the burial expense of the employee has been paid by the applicant Mrs. Jennie Gregory.

ISSUES

The issues in this case are:

1. Was the employment the employee was engaged in on April 8, 1926, maritime employment?

[fol. 63] 2. Was the employee insured?

3. If the employee was injured did said injury arise out of and in the course of said employment, was it proximately caused thereby and did it occur while the employee was performing service growing out of and incidental to the same.

4. Occupation of the employee on April 8, 1926.

5. Dependency.

[fol. 64] Claim No. L. A. 5986

MRS. JENNIE GREGORY et al.

vs.

MORRIS PLEASURE FISHING, INC., et al.

JENNIE GREGORY, applicant, having been first duly sworn, testified as follows:

The Referee:

Q. State your name, please.
A. Jennie Gregory.
Q. You are one of the applicants in this case, are you?
A. Sir?

Q. What is your address?
A. 559 Sepulveda St., San Pedro.
Q. Did you know Leland Gregory during his lifetime?
A. Yes, sir.
Q. Were you his sister?
A. Wife.
Q. When were you married?
A. We was married about fourteen years.
Q. Have you got a marriage certificate with you?
A. I got it, but I have it packed up over there, because I haven't got the things—I got it in my trunk.
Q. Have you just moved?
A. Yes, moved over, and I have not taken nothing out of the box where I had it.
Q. How do you know you got it there?
A. I am sure I got it there.
Q. When did you last see it?
A. I seen it when I moved—a little before, I put it—also his things. It is there, though.
Q. Where were you married.
A. If I looked for it I could get it,—Los Angeles.
[fol. 65] Q. Who performed the marriage ceremony?
A. Witness?
Q. No, was it a justice or priest?
A. A judge of the court.
Q. Judge who performed the marriage ceremony?
A. I cannot remember his name.
Q. Who was witness to this marriage?
A. Some fellow there from the same court, his name was Patterson.
Q. Who was the other witness?
A. That's all. We only had one.
Q. You say you were married fourteen years ago?
A. Yes, sir.
Q. Did you live with Leland Gregory as his wife ever since you were married to him?
A. Yes, sir.
Q. Any divorce between you and Leland Gregory?
A. Never.
Q. Were you ever married before you married Leland Gregory?
A. Yes, sir, I was married before that.

Q. What became of your first husband?

A. I don't know what became of him. We had a separation—got divorced from him.

Q. When did you get a divorce from your first husband?

A. I cannot remember how long it has been.

Q. Did you get a divorce from your first husband?

A. Yes, sir.

Q. Before or after you married Leland Gregory?

A. No, this was before.

Q. What was before?

[fol. 66] A. I got the divorce from my husband.

Q. You got a divorce first from your first husband?

A. Yes, sir.

Q. Before your married Leland Gregory?

A. Yes, sir.

Q. Where did you get that divorce?

A. Up here in Los Angeles.

Q. In what year?

A. I couldn't tell you.

Q. About how many years before you married Leland Gregory was it that you got a divorce from your first husband?

A. I can't remember.

Q. Was it three years, or two years, or five years?

A. Before I married him?

Q. Yes.

A. Oh, it was about a year after I got my divorce. I had to wait and stay a year, then I got married to Leland Gregory.

Q. After the Judge issued you a kind of a paper, you waited a year after that before you married Leland Gregory? What attorney handled your case in this divorce proceeding?

A. Goodrich of San Pedro.

Q. What are his initials?

A. I don't know.

Q. Is Attorney Goodrich still there in San Pedro?

A. He may be there, I don't know, for sure, it has been quite a while.

Q. Who are the parents of Lena Gregory? Who was the father of Lena Gregory?

A. Leland Gregory.

Q. Who was the mother?

A. Jennie Gregory.

[fol. 67] Q. What was the name of your first husband?

A. Tom Yorba.

Q. And is Joe Yorba—is Leland Gregory's stepson?

A. Yes, sir.

Q. How old is Lena Gregory?

A. Twelve years.

Q. And how old is Joe?

A. He is about fourteen.

Q. You got in your application here, seventeen, for Joe, is that a mistake?

A. That he is seventeen?

Q. Yes.

A. About that.

Q. Didn't you say fourteen?

A. How old is he—seventeen.

Q. Who was supporting yourself and these two children on April 8, 1926; who was buying their clothes and feeding them?

A. Mean buying it?

Q. Who did that on April 8, 1926?

A. My old man.

Q. Was Leland Gregory your old man?

A. Yes, sir.

Q. Did you know anyone else that was dependent for support upon your husband, Leland Gregory, besides yourself and these two children?

A. No, sir.

Q. Do you know anything about your husband getting drowned?

A. No, sir, just what I heard, the ones that seen him when he got drowned.

Q. Did you see him after he was drowned?

A. Yes, sir.

Q. When.

[fol. 68] A. After he was drowned—a little after that, they had him at the undertaker's.

Q. What was his occupation on April 8, 1926? What was his business?

A. Working running a boat. Engineer.

Mr. Albright:

Q. What did Mr. Gregory do on this boat?

A. Run the engine.

Q. How far out did they go, do you know?

A. I couldn't tell you about how far it was. They used to go and fish from there.

Q. How long had he been working for Captain Morris?

A. Two years.

Q. Who did he work for before he went to work for Captain Morris?

A. He used to work for Mr. Harris, that fellow that's got a boat up here in Wilmington, that's his first name, used to go out fishing.

Q. Where did they fish then?

A. Different kinds of places, the Islands around.

Q. How long before you were divorced did you know Leland Gregory?

A. I knowed him since he was a boy.

Q. You knew Leland Gregory since he was a boy?

A. Yes, knowed all his family too.

Q. Who paid for your divorce?

A. He did.

Q. Was Joe born before you were divorced?

A. Joe was born when I was married to my first husband.

Q. You were still living with your first husband when Joe was born?

A. Yes.

[fol. 69] Witness excused.

Josephine Morris, 607 Euclid Avenue, Santa Monica, California, witness called by defendants, having been first duly sworn, testified as follows:

The Referee:

Q. What was your occupation on April 8, 1926?

A. I was secretary and treasurer of the Morris Pleasure Fishing Company.

Mr. Albright:

Q. Mrs. Morris, will you kindly explain to the Referee the operations carried on by your company?

A. We have pleasure fishing boats out from Santa Monica carrying passengers out to fish, and they go up and down the coast, sometimes two miles, or two miles and a half offshore, up as far as Point Duma, down as far as Point Vincente, returning to the Municipal Pier at Santa Monica. We have operated there for five years.

Q. How many boats did you operate there, Mrs. Morris?

A. We have five at the present time.

Q. How many did you have on April 8th?

A. Six.

Q. What are the sizes of the boats? Can you give the approximate tonnage?

A. No, I just cannot do that. There is one 36 feet or 38 feet, 42, 48 and 52, I think.

Q. Can you give us approximately the tonnage of the W. K., one of your boats?

A. No, I cannot.

Q. Did you see the drowning of Leland Gregory and Paul Brooke?

A. No, sir, I did not see it, but I saw them working over them, the Captain and I went after Mrs. Gregory.

[fol. 70] Q. How much do you charge the passengers that go out on your boats? What is the fee?

A. One boat makes two trips in the daytime, and it is one fifty for the privilege of both trips; the other boat that remains all day is two dollars, afternoon trip is one dollar.

Q. Do these boats ever go out farther than two and one-half or three miles?

A. No, sir.

Q. Are they captained?

A. They are captained, but it is not necessary, because the fish are usually—sometimes they go over to what they call "the rock-cod bank," about ten miles right straight out. In the winter it is necessary——

Q. Do they ever go to Catalina?

A. No, sir, that would be unnecessary for the fishing.

Q. What was Leland Gregory's duty with your company?

A. He was the boat operator.

Q. And as such he had charge of the motor on the boat?

A. Yes, sir, he had full charge of the boat while she was away from the pier.

Q. Who was the master of the W. K.?

A. Chester Heddon.

Q. He was the man that was in charge of the boat?

A. He was over at San Pedro that day, working, because it was rough, and the boats could not go out, and the others were getting ready to go.

Q. In his absence who was in charge of the W. K. at the time this accident happened?

A. There was no one on board of it at the time.

Q. But who was in charge of the whole, was responsible for it?

[fol. 71] A. Well, it has always been in our work whoever the Captain—he tells the men to go and take another boat, if he is capable of doing that.

Q. You did not see the actual happening of the accident?

A. No, sir.

The Referee:

Q. Do you know whether or not Mr. Leland Gregory was sent out on this boat on April 8th, 1926?

A. I understood from several of the witnesses that they were volunteers to go with my husband to rescue the W. K.

Q. These boats that were furnished by the company of which you are secretary and treasurer were used simply for the purpose of taking passengers out in the ocean and allowing these passengers to fish in the ocean?

A. Yes, sir.

Q. Did you furnish the fishing apparatus for them to fish?

A. No, sir.

Q. They furnished that themselves?

A. They either took their own or rented it.

Q. Did the company which you were connected with have anything to do with this fish that these passengers caught?

A. No, sir, the fish belonged to them.

Q. Did your company go out fishing with these boats, the kind that the employee was in, for the purpose of catching fish and selling those fish?

A. No, sir, we did not commercialize fish.

Q. Then your company business was simply to give passengers pleasure rides on these boats along the coast, allowing them to fish at the same time?

A. Yes, sir.

[fol. 72] It is ordered that the case be set down for further hearing at Los Angeles, upon notice to both parties.

This case to be set at the same time as the Brooke vs. Morris, et al., L. A. No. 6044.

[fol. 73] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim Number L. A. 5986

MRS. JENNIE GREGORY and LENA GREGORY and JOE YORBA, Minors, by Their Guardian ad Litem, Jennie Gregory, Applicants,

vs.

MORRIS PLEASURE FISHING, INC., and LONDON GUARANTEE & ACCIDENT COMPANY, LTD., Defendants

Report of Further Hearing—Filed Jan. 27, 1927

This cause came on regularly for hearing on September 13, 1926, at 3:30 o'clock P. M., at 911 Sun Finance Building, Los Angeles, California, before Letus N. Crowell, Referee.

Present:

Mrs. Jennie Gregory, Applicant, in person; address: 559 Sepulveda Street, San Pedro, California. Applicants not represented by any attorney.

Defendants represented by W. E. Albright, Adjuster, 510 H. W. Hellman Building, Los Angles, California.

Mary Beck, Reporter.

Whereupon the following proceedings were had, to-wit: Witnesses: Captain Clifford A. Morris, John T. Dugan.

The Referee: Let the record show that the Applicant produced her marriage certificate, which was inspected by the Referee and the attorney for the defendants, and the same appearing regular on its face, the filing of the same is hereby waived.

Attorney Shippey on Gregory case appearing toward the end of the testimony of Captain Clifford A. Morris.

[fol. 74] **Claim Number L. A. 5986**

MRS. JENNIE GREGORY et al.

vs.

MORRIS PLEASURE FISHING, INC., et al.

TRANSCRIPT OF TESTIMONY

The Referee: Mrs. Gregory, have you anything further to add to what you said at Long Beach?

Mrs. Gregory: No, that is all, I have said all that I had.

The following witnesses, in the Gregory case only, called by defendants:

Captain CLIFFORD A. MORRIS, 607 Euclid Street, Santa Monica, being first duly sworn, testified as follows:

The Referee:

Q. What was your business on April 8th, 1926?

A. Boat operator.

Adjuster Albright:

Q. Were you an officer of the corporation under date of April the 8th?

A. No, not at that time.

Q. You were a boat operator?

A. Yes.

Q. Can you state how many boats were in operation by the Morris Pleasure Fishing Company, Incorporated?

A. Four, I think, at that time, four in operation, two laid up.

Q. Can you count, or approximate, tonnage of each of them?

A. The "Palisades" is fourteen tons; the "W. K." is seven tons, the "Lark" is five tons, and the "Maie" is four tons, that is four.

Q. Were those boats in commission on the date of April the 8th, 1926, and operated by the company at that time? [fol. 75] A. They were being operated different days. They weren't operated on that day.

Q. But they were all in commission?

A. Yes.

Q. What power do they use in operating those boats?

A. Gas engines.

Q. On all of the four boats sailing navigable waters of the Pacific for fishing purposes?

A. Yes.

Q. Where did they usually go to fish?

A. In Santa Monica Bay, as they call it. It is a bay inside of a line drawn between Point Fermin and Point Duma.

Q. About how far from shore?

A. About ten miles, approximately, from the Santa Monica Pier.

Q. Did they ever make any exception to the place where they went fishing? Just describe it yourself.

A. When they land at San Pedro, they went outside, up Santa Monica Bay, for repairs, but they never run outside. They have since, our boats, this summer, have gone outside ten miles, ten miles, but not then.

Q. How far is Santa Monica from San Pedro?

A. Thirty miles, around the shore.

Q. How far out do they go?

A. Not more than five.

Q. Did your corporation engage in the sale of fish on or about April 8th?

A. No.

Q. Does the corporation, or did the corporation, on or about April 8th, run these boats exclusively for the public for the purpose of fishing?

[fol. 76] A. Yes, of course, there were small jobs, like putting out light lines and floats around the pier, there, sometimes free, and sometimes we charged.

Q. For fishermen?

A. No, for clubs, and some for the city.

Q. But you didn't place any nets for your own self, for your own purpose?

A. No.

Q. What was the rate of fare on those fishing excursions?

A. The all-day, about from 8 A. M. to 4 P. M., was charged $4.00, and the two-trip boat was $2.50, if they came at noon and went back.

Q. Did you know Leland Gregory in his life?

A. Yes.

Q. Was he a licensed navigator?

A. He had a boat operator's license.

Q. Is that boat license issued by the United States Government?

A. Yes, Steamship Inspection Service.

Q. How far were these boats capable of cruising?

A. That would depend on the fuel capacity, I should imagine they could run maybe five hundred miles, they could carry that amount of fuel.

Q. Did you witness this accident?

A. No.

Mr. Albright: That is all.

The Referee:

Q. What happened to this Leland Gregory? What was his occupation?

A. He was a boat operator, a master of a boat.

Q. Did you know him?

[fol. 77] A. Yes.

Q. What became of him?

A. He was drowned.

Q. When?

A. On April 8th.

Q. Where?

A. Santa Monica Bay.

Q. What time did he drown?

A. I am not certain, but I think it was around one o'clock.

Q. In the daytime?

A. Yes.

Q. How did he happen to get drowned?

A. He went out in a skiff with two other men, to make an attempt to get aboard a boat that was drifting, and they failed in their efforts to get aboard, and the skiff they were going out in capsized and they were drowned.

Q. Was it part of his duties to do that?

A. No, he didn't have to do it, no. It was voluntary, I believe, he wasn't in any way forced to do that, it was voluntary.

Q. This man Gregory went out to make a rescue of what?

A. Of the boat "W. K.," she was drifting ashore, she had broke her moorings, and was drifting ashore, and they had an idea they could go out in the skiff and get her ashore. She was drifting on the beach.

Q. Whose boat was it that was drifting ashore?

A. It belonged to the Morris Pleasure Fishing Corporation.

Q. Was it proper to have this boat that was drifting go to the shore if it belonged to the defendants in this case?

A. I don't understand.

Q. A boat was out there drifting on the bay?

A. She had broken moorings, and the buoy had broken the moorings, and she was going on the shore, and they thought that they could save the boat from going on the shore, by putting out in a boat, boarding her, which is very [fol. 78] often done in such a case.

Q. Who ran that boat?

A. Chester Hedlan was the boy that was running it that time, I think. Sometimes they shifted them around.

Q. Where is he?

A. He is at Santa Monica now, he is running "Palisades."

Mr. Albright: You meant who had charge of the boat sent out to rescue him?

The Referee: No, the boat that was drifting.

Captain Morris: There was nobody on the boat when she was drifting, there would be none until it was time for the men to go on board.

The Referee:

Q. Was it to the interest of the defendant that the fishing company would want the boat that was drifting and

broke loose from its anchor, and was drifting, boarded and ashore this deceased attempted to do?

A. I don't understand.

The Referee: Read the question.

A. Of course the boat was insured, they would all have benefited by that. They would all have shared alike in salvage if they had boarded the boat.

Q. Because the company carried insurance on this boat they didn't care whether the boat broke loose or not?

A. They are expected to do all they can to save a boat.

Q. Who? Is expected to do?

A. Anybody, I suppose, they can use their own judgment in a case of that kind, I don't know that they are expected.

[fol. 79] Q. Who do you mean by "them"?

A. Anybody that should happen to see the boat going ashore; that is the way among sailors and on the water, if they see anything going to destruction. I don't know that they are required to do it, it is usually expected that somebody should take a chance and try to save property that is going to destruction; that is a standing order among seafaring men.

Q. That is what Leland Gregory was doing at the time, trying to save this boat?

A. Yes.

Q. Was his body ever recovered?

A. Yes.

Q. Anybody else with Gregory at the time?

A. Yes. Horbross and Captain Austin J. Morrison.

The Referee: Next witness.

Called by defendants for the Gregory case, sworn and testifying as follows: John T. Dugan, 601 Euclid Avenue, Santa Monica, California:

The Referee: Examine, Mr. Albright.

Adjuster Albright:

Q. Were you employed by the Morris Pleasure Fishing Corporation on April the 8th?

A. Yes.

Q. In what capacity?

A. Boat operator.

Q. Were you—did you know Leland Gregory?

A. Yes.

Q. What was he, in what capacity was he employed by the Morris Pleasure Fishing Corporation?

[fol. 80] A. Boat operator.

Q. Did you witness the accident that occurred on April 8th, in which Mr. Gregory lost his life?

A. Yes.

Q. Where were you at the time?

A. I was standing on the Santa Monica Pier part of the time and the rest of the time I was in the skiff, trying to save it.

Q. Will you tell the Referee just what happened?

A. Gregory and a bunch of us were—had been resting there, and we stayed in the car, when we got through eating, and Paul Brooks came running up and said that the boat was broke. We got down to the end of the pier and seen that the boat was drifting. All of us fellows looked at it, we thought that we could save it. It looked far enough for us fellows to go get it, and Captain Morris and Paul Brooks and Leland Gregory jumped into the skiff, and I too, ran over to the skiff. We had three sets of oars in the skiff. We started after it, and we got along even until we got within fifty feet of the boat, and a big swell came along, turned the skiff upside down, and threw them into the water. They were struggling, trying to get the skiff back up, and it kept drifting, and a heavy swell running, and the boat kept drifting in all the time, and she turned over. About that time I fixed myself—another fellow and myself, and we loaded the skiff with life-preservers and went after them, and then I didn't see them any more until I got to where they was, and then we couldn't see them and we came on in, and they had gotten Gregory's body and the other two were gone.

Q. How far from the shore, or about how far from the end of the Santa Monica Pier, had the "W. K." been moored?

A. Almost half a mile, within three quarters and a half a mile.

Q. From the end of the shore line?

A. From the end of the pier.

[fol. 81] Q. How far from the shore does the pier extend into the sea?

A. About fifteen hundred feet, Fifteen, sixteen hundred feet.

Q. Did Captain Morris give—Captain Stanton Morris, give any orders to Gregory or Brooks to go out and attempt to save this boat?

A. No, sir, that was all voluntary.

Q. In their usual—Did Captain Morris give orders to anyone?

A. No, sir.

Q. Did the Captain say that he was going out to save the "W. K.?"

A. He came down to the pier, there, and the skiff was lying there. He said, "Come on, boys, let us go get her." That is all he said. We jumped around then, also, as we usually do, we can see what is going to happen, we don't wait for orders in a case like that.

Q. How long have you worked for the Morris Pleasure Fishing Company?

A. Four years.

Q. How long have you known Leland Gregory?

A. Four years.

Q. Was he an experienced navigator?

A. Yes, the best of them.

Q. What was his license?

A. Third or fourth issue.

Q. That would be fifteen or twenty years' experience?

A. Yes.

Q. That is all.

The Referee:

Q. Was Captain Morris in authority over Mr. Gregory?

A. Yes.

Q. When Captain Morris said "Come on, boys, let us save it," was those remarks addressed also to Gregory?

[fol. 82] A. Included all of us boys, every one of us; I was just as well included and jumping as anybody.

The Referee: Any more witnesses?

Adjuster Albright: That is all I have.

The Referee: Let the record show that the Applicant produced her marriage certificate, which was inspected by the Referee and the Attorney for the defendants, and the same appearing regular on its face, filing of the same is hereby waived.

Gregory case submitted.

[fol. 83] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim Number L. A. 6044

SARAH JANE BROOKE and JOHN ARTHUR BROOKE, Applicants,

vs.

MORRIS PLEASURE FISHING, INC., and LONDON GUARANTEE & ACCIDENT COMPANY, LIMITED, Defendants

Applicants' attorney, Robert F. Shippey.
Defendants' representative, W. E. Albright.

FINDINGS AND AWARD—Filed Oct. 6, 1926

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, or having been duly served with process, and the matter having been regularly heard before Letus N. Crowell, Referee, and submitted for decision, this commission makes its Findings and Award as follows:

Findings of Fact

1. John James Uttley Brooke, hereinafter called the employee, while employed as a spare skipper on April 8th, 1926, at Santa Monica, California, by defendant Morris Pleasure Fishing, Inc., sustained injury occurring in the course of and arising out of his employment, as follows: The employee was drowned. Said injury proximately caused the employee's death on April 8th, 1926.

2. At the time of said injury the employee was not engaged in maritime employment and both employer and employee were subject to the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917, and the Amendments thereto.

3. At said time the employer's insurance carrier was defendant London Guarantee & Accident Company, Limited.

4. At the time of said injury applicant Sarah Jane Brooke was neither wholly nor partially dependent for support upon the employee.

5. At the time of said injury applicant John Arthur [fol. 84] Brooke was neither wholly or partially dependent for support upon the employee.

6. The reasonable expenses of the employee's burial is the sum of $150.00. Said sum of $150.00 should be paid by said insurance carrier directly to Mendenhall whose address is Fourth Street, Santa Monica, California.

Award

Award is made in favor of Mendenhall against London Guarantee & Accident Company, Limited, of burial expenses in the sum of $150.00 payable forthwith; and

It is ordered that all payments herein awarded shall bear interest at the rate of seven per cent per annum until paid, beginning with the date of this Award or the date thereafter at which payment becomes due; and

It is ordered that applicant Sarah Jane Brooke take nothing from said defendants, or from either of them and that said defendants be and they are hereby relieved from liability to said applicant Sarah Jane Brooke upon the claim herein asserted; and

It is ordered that applicant John Arthur Brooke take nothing from said defendants, or from either of them and that said defendants be and they are hereby relieved from liability to said applicant John Arthur Brooke upon the claim herein asserted; and

It is ordered that defendant Morris Pleasure Fishing, Inc., the employer, be and it is hereby dismissed herefrom.

Industrial Accident Commission of the State of California. John A. McGilvray, John W. Carrigan, Commissioners.

Dated at San Francisco, California, this 6th day of October, 1926.

Attest: J. S. Thomas, Assistant Secretary.

DNC:MGB.
9/23/26.

[fol. 85] [File endorsement omitted]

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

Claim L. A. 6044

[Title omitted]

PETITION OF DEFENDANTS FOR REHEARING—Filed Oct. 21, 1926

Come now the defendants, Morris Pleasure Fishing Incorporated and London Guarantee & Accident Company Ltd., defendants in the above entitled action, and pray that a rehearing be granted for the following reasons:

I

That the Commission acted without or in excess of its powers;

II

That the evidence does not justify the findings of fact;

III

That the defendant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

IV

That the findings of fact do not support the award.

The reasons above advanced for the granting of a rehearing of this action are based on the following facts and authorities:

[fol. 86] I

The testimony introduced at the hearing shows that John James Utley Brooke, the employee, was employed by the defendant as a spare skipper in connection with the operation of the several vessels operated by the defendant. The defendant owned and operated four fishing vessels of four, five, seven and fourteen ton registry which were operated upon the navigable waters of Santa Monica Bay, Pacific Ocean, on or about April 8, 1926. The defendant operated these boats exclusively for the benefit of passengers, charging a fixed price or fare for a trip to the fishing banks ten miles off shore where the passengers of the vessel could engage in fishing if they so desired, the employees of the defendant did not engage in fishing. Neither the defendant nor their employees engaged in the selling of fish.

The duties of the employee were those incidental to assisting in the operation of the boats upon navigable water. At the time of the accident which resulted in the drowning of John James Utley Brooke, the employee, accompanied by Leland Gregory and Thornton J. Morris were attempting to reach and board the vessel W. K. which had been riding at anchor approximately three-quarters of a mile from shore on the navigable waters of Santa Monica Bay and the Pacific Ocean which, during the storm which was in progress at the time, broke loose from its anchorage, started to drift and headed for the Santa Monica Pier. To save the doomed vessel, the three men set out in an 18 foot skiff on the navigable waters of the Pacific Ocean and had reached a point within fifty feet of the vessel W. K. when a large comber or swell capsised the skiff throwing the three [fol. 87] men into the sea. The aforesaid operations were all performed upon navigable waters, the contract of employment under which the employee was employed at the time of his drowning, was a maritime contract, the work in which the employee was engaging at the time of his drown-

ing was maritime, the drowning occurred upon navigable waters.

II

In determining whether a contract be of a maritime nature, the true test is the subject matter of the contract—the nature and character of the work to be done.

State Industrial Commission vs. Hordenholt Corpn. 259 U. S. 263; 259 Rep. 271; 66 Led. 933.

There was of course no formal or written contract between the employee and his employer—nothing except the contract which is implied from the employment itself. To determine then, whether employees contract of employment was maritime, we must look to the nature and subject matter of the employment.

III

In determining whether the work in which the employee was engaged at the time of his drowning, was of a maritime nature, consider the definition of "maritime," as found in Black's Law Dictionary.

"Maritime," pertaining to the sea or ocean, or the navigation thereof; or to commerce conducted by navigation of the sea or (In America) of the Great Lakes and Rivers.

The employee was engaged in work of a nature pertaining to navigation of the sea, upon navigable waters of the sea.

Whether an employment in any given instance is maritime depends exclusively whether the service to be performed is of a maritime nature—that is, normally—a service connected with navigation or commerce upon navigable waters.

[fol. 88] Atlantic Transport Co. vs. Imbovek, 234 U. S. 52; 53 Led. 1208.

The employee was employed upon navigable waters and engaged in work as a member of the crew in connection with the operation of vessels and at the time of his drowning, was attempting to reach and board a vessel that had broken

loose from its anchorage and was drifting upon navigable waters.

IV

In determining whether the drowning occurred upon navigable waters, it must be admitted that the waters of Santa Monica Bay are in general navigable in the sense here contended, in fact, must be considered navigable under any test. Navigable waters are waters capable of being navigated, that is, navigable in fact;

The Genesee Chief vs. Fitzhugh, 53 U. S. 1058; 12 How. 443; *53 U. S. 1058;* 13 L. ed. 1058.

The Montebello, 20 Wall. 430; 87 U. S. 391; 22 L. ed. 391.

The Daniel Bell, 10 Wall. 557; 77 U. S. 999; 19 L. ed. 999.

The waters here concerned were not only capable of being navigated, but were actually navigated by the vessels of the defendant and it can not be held other than that the movements of these vessels over and about the waters of Santa Monica Bay is navigation thereof and hence a maritime matter.

In determining whether the Industrial Accident Commission of the State of California has jurisdiction over the issue herein raised, it has been heretofore pointed out that the work in which the employee was engaging, was maritime in its nature, his employment was a maritime contract, the drowning was likewise maritime and the rights of the parties in connection therewith, are likewise maritime, and [fol. 89] the rights and liabilities of the parties concerned, are therefore matters clearly and exclusively within the admiralty jurisdiction.

Southern Pacific Co. vs. Jensen, 244 U. S. 205.

Chalentia vs. Luckenbach S. S. Co., 247 U. S. 372.

Alaska Packers Assn. vs. Ind. Acc. Com., 218 Pac. 561.

Zurich Gen'l Acc. Com. vs. Ind. Acc. Com., 218 Pac. 563.

Robbins Dry Dock & Repair Co. vs. Lars Dahl, — U. S. Sup. Ct. 372.

Now, therefore, the defendants herein pray that this petition for rehearing be granted.

Morris Pleasure Fishing, Inc., and London Guarantee and Accident Company, Ltd., a Corporation, by W. E. Albright, Manager of Claims.

[fol. 90] *Duly sworn to by Wm. Albright. Jurat omitted in printing.*

[fol. 91] BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

L. A. No. 6044

ORDER DENYING PETITION FOR REHEARING—Filed Nov. 5, 1926

[File endorsement omitted.]

Good cause appearing therefor:

It is hereby ordered that the petition for rehearing filed by defendants on October 21, 1926, be, and the same is hereby denied.

Industrial Accident Commission of the State of California. John A. McGilvray, John W. Carrigan, Commissioners.

Attest: F. B. Lord, Secretary. (Seal.)

Dated at San Francisco, California, this 5th day of November, 1926.

[fol. 92] IN SUPREME COURT OF CALIFORNIA

No. —

LONDON GUARANTEE & ACCIDENT COMPANY, LTD., Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, Sarah Jane Brooke, and John Arthur Brooke, Respondents

PETITION FOR HEARING IN THE SUPREME COURT AFTER FINAL DECISION BY THE DISTRICT COURT OF APPEALS, SECOND APPELLATE DISTRICT, DIVISION TWO

To the Hon. William H. Waste, Chief Justice, and Assistant Justices of the Supreme Court, of the State of California:

Respondents Industrial Accident Commission of the State of California, and Sarah Jane Brooke and John Arthur Brooke, respectfully petition this Court for hearing in the above entitled matter and for the transfer of said cause to this Court after final decision of the District Court of Appeal-, Second Appellate District, Division Two.

The opinion and judgment of the District Court of Appeal was rendered May 26, 1927, and became final on June 25, 1927. This petition is filed within ten days thereafter. A copy of the opinion of the District Court of Appeal is attached to this Petition as exhibit "A."

The question presented in this proceeding summarized down to the last analysis is:

[fol. 93] Was the business of the employer and general employment contracted for of such a nature as to bring it under the EXCLUSIVE jurisdiction of the admiralty courts calling for the application of the maritime law?

OR

Was it ESSENTIALLY A LOCAL MATTER permitting the application of the rule laid down in *Grant Smith-Porter Ship Co. v. Rohde*, 257 U. S. 469, as follows:

"Under such circumstances regulation of rights, obligations, and consequent liabilities of the parties, as between

themselves, by a local rule, *would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in* ITS INTERNATIONAL OR INTERSTATE RELATIONS. (Capitalizing and underscoring ours.)

The question presented must be determined upon a close and careful analysis of the facts found in the case at bar. The dominant facts are:

(1) The business of the employer was entirely local to the City and Port of Santa Monica, a pleasure concession pure and simple.

(2) Not the slightest taint of interstate or foreign commerce.

(3) At and prior to the injury, the vessel "W. K." was not in active service. On the contrary, it was deserted and anchored.

(4) The deceased employee at the time of the injury was not a member of the crew of the vessel "W. K.," but on the contrary his effort to reach this drifting vessel was being made pursuant to his general duties in the general employment (both upon land and navigable waters) with his employer.

(5) Part of the employer's business involved the use of vessels operating upon the waters of Santa Monica Bay.

(6) The deceased employee was employed to assist in operating these vessels.

(7) The injury occurred upon waters susceptible to navigation.

[fol. 94] These latter facts invoke the jurisdiction of the admiralty courts as a general proposition, but (and again we state the question):

"Will the enforcement of the state compensation act work any material prejudice to the characteristic features of the general maritime law or interference with the proper harmony or uniformity of that law in its international or interstate relations?"

Determination of this question we most respectfully submit largely depends upon the attitude taken by the court toward its own state statute, and above all shall depend upon the court's ability to adhere to fundamental principles and to clearly think its way through the chaos created by decisions heretofore rendered in maritime matters.

The attitude of some courts is as follows:

"*I believe in giving force to our statutes* unless for some very clear reason they appear to be unconstitutional. Like all new subjects for legislation and judicial action, the rights of the working man under our two jurisdictions must be slowly and gradually developed. We cannot expect that all wisdom will be expressed in the first decision. Man is not infallible, and time develops many new viewpoints. In this process of adjustment, we must not be too ready to criticise decisions or find fault with uncertainties. The courts do the best they can. *It is in this attitude that I approach the decision in this case, and feel that until the United States Supreme Court has decided that state Legislatures can in no way legislate for the benefit of longshoremen I have decided to cast my vote in favor of our state statute* and the right of such men to take compensation under the Workmen's Compensation Law."

Fitzgerald vs. Harbor Lighterage Co., 155 N. E. 74, p. 77.

(Underscoring ours.)

"The principles by which this court must be guided were stated in Gillard's case, 244 Mass. 47, 51, 52; 138 N. E. 384, 385, 386, in these words:

'The Workmen's Compensation Act therefore must be and is interpreted as intended only to operate upon the classes of employment and injuries within the jurisdiction of the General Court. On the other hand, the words of [fol. 95] the act and its chief amendments render the connection irres-tible that the General Court intended to make the act applicable to all classes of injuries therein described which are within its jurisdiction. The statute is as broad as the jurisdiction of the commonwealth.' (citing cases) 'In none of the cases which have come before us since the decision of the Southern Pacific Co. v. Jenson' (citation) 'have we undertaken to delimit the jurisdiction of the commonwealth under the Workmen's Compensation Act fur-

ther than to apply to specific cases the principles of that decision as we understood them.' (citing cases) 'The language of that act, in view of its beneficient purposes, ought not to be narrowed any further than judicial bounds demand. So far as our own decisions are concerned, we are quite at liberty to extend the Workmen's Compensation Act to any cases to which it is applicable under adjudication of the Supreme Court of the United States and it is our duty so to extend it in order to effectuate the intention of the legislature.' Toland's case. 155 N. E. 602."

The law maritime is notoriously incomplete as will be more fully hereinafter pointed out. Interpretations by the various courts of the scope and effect of the law maritime and of the limits to the jurisdiction of the admiralty courts has produced a long line of confused authorities on the question presented in this proceeding which we again restate to be:

What is the extent of the application of the state compensation act to injuries received by one working upon a boat afloat in navigable waters. Is the same within exclusive admiralty jurisdiction or upon the facts found in the case at bar is it of such a local nature that assertion of jurisdiction by the local courts and application of the provisions of the Workmen's Compensation Act will work any material prejudice to the characteristic features of the General Maritime law or interfere with the proper harmony or uniformity on that law in its international or interstate relations.

In a well considered case, Mr. Justice Day of the Supreme Court of Ohio presents an analysis of maritime decisions which I believe will be of inestimable value to this [fol. 96] court in determining the question herein presented. In State ex rel. Cleveland Engineering Construction Co. v. Duffy et al., 148 N. E. 572, 574, the court says:

"Under these contracts of employment do the rights and liabilities have a direct relation to navigation? And would the application of the local law (Compensation Act) materially affect *any of the rules of the sea* and thereby the uniformity which is essential to maritime law?

• • • • • • •

"With these definitions in mind, what is the character of work for which the plaintiff herein contracts with its employees?

* * * * * * *

"A careful examination of the range of work which the employees of plaintiff performed *would seem to disclose nothing that had a direct bearing upon the maritime service, navigation, or maritime commerce, either interstate or foreign.* * * *" (Underscoring ours.)

The court then proceeds to show that there are two parallel lines of decisions, one line having its basis in the decision of the United States Supreme Court in the Jensen case (Southern Pacific Co. v. Jensen, 244 U. S. 205), the other having its basis and inception in the Rohde case (Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469).

The court goes on to say:

"A large number of cases may be cited which adopt the principle announced in Southern Pacific Co. v. Jensen, supra, but all that class of cases is founded upon some conflict of the law of the sea or maritime law with the local statute. These cases often relate to stevedores or longshoremen unloading the cargo of vessels or artisans working upon a vessel *engaged in interstate or foreign trade; in fact, all of them have some direct bearing upon maritime law.* On the other hand, the courts distinctly recognize a group of cases, of which Grant Smith-Porter Ship Co. v. Rohde, supra, is the leading case, *all founded upon the principle that their provisions were found not to be in conflict with any essential feature of the general maritime law.* Industrial Commission of N. Y. v. Nordenholt Corp., 259 U. S. 263, 42 S. Ct. 473, 66 L. Ed. 933, 25 A. L. R. [fol. 97] 1013, is of this class; also Western Fuel Co. v. Garcia, Adm'r, 257 U. S. 233, 42 S. Ct. 89, 66 L. Ed. 210. *The difference is distinctly noted in Washington v. W. C. Dawson & Co.* and Industrial Accident Comm. of Cal. v. James Rolph Co., 264 U. S. 219, 44 S. Ct. 302, 68 L. Ed. 646; also Robins Dry Dock & Repair Co. v. Dahl, 266 U. S. 449, 45 S. Ct. 157, 69 L. Ed., decided January 5, 1925. In these last three cases the rights and liabilities of the parties arose out of and depended upon general maritime law, and

could not be enlarged or impaired by statute. To the same effect is the holding in Alaska Steamship Co. v. McHugh, where the Supreme Court determined that the so-called First Employers' Liability (federal) Act (U. S. Comp. St. Secs. 8657-8665) did not apply to purely maritime torts, decided April 13, 1925, 45 Sup. Ct. 396, 69 L. Ed. —.

"Among the state courts recognizing the doctrine here held may be cited Berry v. Donovan & Sons, 120 Me. 457, 115 A. 250, 25 A. L. R. 1021; also Wooley v. E. M. Wichert Co., 275 Pa. 167, 118 A. 765. In this case the plaintiff's husband was employed as a foreman on a derrick boat, which was anchored in a harbor on a navigable river, and was used for excavating purposes, and it was held that the employment was nonmaritime. In Millers' Indemnity Underwriters v. Boudreaux (Tex. Civ. App.) 245 S. W. 1025, the cause of action arose out of the death of a diver in a navigable stream working off a floating barge. It was held that it was not shown by the evidence to be maritime in nature as regarded the right to compensation under the Workmen's Compensation Act. *This case distinctly recognized the Grant Smith-Porter Ship Company Case, supra,* and the Nordenholt Corp. Case, supra, *and said that, had those cases been before the court when Home Life & Accident Co. v. Wade (Tex. Civ. App.) 236 S. W. 778, was decided, the conclusion would have been different, and the rule announced in Grant Smith-Porter Ship Co. and Nordenholt Corp. Cases adopted.* To the same effect are the cases of Employers' Liability Assurance Corp., Ltd., v. Industrial Accident Comm., 177 Cal. 771, 171 P. 935; Los Angeles Shipbuilding and Drydock Co. v. Industrial Accident Comm. 57 Cal. App. 352, 207 P. 416; Gillard's case, 244 Mass. 47, 138 N. E. 384; Bockhop v. Phœnix Transit Co., 97 N. J. Law, 514, 117 A. 624; Wooley v. E. M. Wichert Co., 275 Pa. 167, 118 A. 765; Lumbermen's Reciprocal Ass'n v. Adcock (Tex. Civ. App.) 244 S. W. 645; Riedel v. Mallory Steamship Co., 196 App. Div. 794, 188 N. Y. S. 649; Lawton v. Diamond Coal & Coke Co., 272 Pa. 74, 115 A. 886; Travelers' Ins. Co. v. Bacon, 30 Ga. App. 728, 119 S. E. 458; Zahler v. Department of Labor and Industries, 125 Wash. 410, 217 P. 55.

[fol. 98] "Other states have reached conclusions denying the application of the workmen's compensation statutes fol-

lowing the rule of the Jensen Case, but an examination of those cases will disclose that the contract of employment and services rendered were maritime in character. A good case illustrating this viewpoint and citing many authorities is O'Hara's Case and Brandeis' Case, decided by the Supreme Judicial Court of Massachusetts, 248 Mass. 31, 142 N. E. 844. This is a well-considered case, and distinguished Gillard's Case, 244 Mass. 47, 138 N. E. 384. Other cases recognizing the maritime principle of the Jensen Case are Doey v. Howland, 224 N. Y. 30, 120 N. E. 53, followed in Anderson v. Johnson Lighterage Co., 224 N. Y. 539, 120 N. E. 55; Newham v. Chile Exploration Co. 232 N. Y. 37, 133 N. E. 120, 25 A. L. R. 1018; Thornton v. Grand Trunk Milwaukee Car Ferry Co., 202 Mich. 609, 168 N. W. 410; Neff v. Industrial Comm., 166 Wis. 126, 164 N. W. 845.

"Many other cases could be cited illustrating this viewpoint, but, as noted above, all of them rest upon the maritime character of the work in which the injured was engaged and direct relation to navigation.

"*The appplication of this character of cases must be denied in the present instance,* for THE REASON IT DOES NOT APPEAR BY THE ALLEGATIONS OF THE PETITION THAT A SINGLE ONE OF PLAINTIFF'S EMPLOYES WILL EVER COME IN CONTACT WITH A VESSEL ENGAGED IN COMMERCE, FOREIGN OR DOMESTIC, INTRASTATE OF INTERSTATE, *OR WITH NAVIGATION IN ITS GENERALLY ACCEPTED MEANING.*

"It is of course difficult to lay down a hard and fast rule which is to apply in all cases where the employment is close to the line as to being maritime or otherwise, and it is possible that plaintiff may some time have a case involving maritime service, but from the language and allegation of the petition *we are disposed to classify the service therein averred as nonmaritime in character, even though rendered 'on floating vessels in navigable waters.'*

"The principles applicable to this case are thoroughly discussed in Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A. L. R. 1145, 25 A. L. R. 1029, 31 A. L. R. 518.

"From an examination of the many authorities *we believe the rule to be* that, unless some interference with

maritime law and navigation or maritime trade is shown, recovery under state compensation laws will be allowed, [fol. 99] where the parties have contracted with reference thereto and desire to regulate their rights thereby.

"We therefore reach the conclusion that under the averments of this petition the character of the work stated would seem to show no invasion of maritime law, and the fact that the parties have contracted with reference to the state law and desire to come within the state Compensation Act, the nature of their employment *showing no invasion of maritime law*, we do not feel justified in denying the relief the Petition seeks."

(Underscoring and capitals ours.)

The decision of the District Court of Appeal (Exhibit "A" attached hereto) is proof of exhaustive reading in maritime law on the part of the court. It shows, however, an adherence to line of decisions adopting the principle laid down in the Jensen Case, supra. The attitude of the District Court of Appeal in this decision is, we must respectfully submit, contrary to the attitude taken by this Court in its recent decisions made in City of Oakland v. Industrial Accident Commission, 198 Cal. 273; Alaska Packers v. Industrial Accident Commission, 73 C. D. 330.

Why the District Court of Appeal took this ultra conservative attitude in the face of the language of this Court in the Peterson and Paul Cases, supra, is hard to say. That it did take an ultra conservative attitude cannot be disputed, for the District Court says:

"It can hardly be said that the body of judicial decisions is sufficiently diversified as yet to permit any broad generalization definitive of the class called cases of local concern. The law of the subject is still in a formative stage, and intervening between the dominant maritime class and the territorial class is a twilight zone which will doubtless narrow, little by little, as the marginal lines become more sharply delimited under the process of judicial paring. At present we may, however, make certain general deductions from the decisions of authoritative rank" (page 15 of decision).

[fol. 100] The District Court then goes on to state these certain general deductions and specifically finds—

" • • • The case at bar, which, *possessing no affinity with cases of mere local concern*, must take its place in the realm over which admiralty reigns supreme." (Underscoring ours.)

In reaching this ultimate decision, the District Court of Appeals does not point out the facts wherein the case at bar possesses no "affinity with cases of mere local concern"; nor does the District Court in this decision rendered indicate how the application of the local law or workmen's compensation act to the case at bar can possibly prejudice the, or any particular, characteristic features of the general maritime law; nor does the District Court of Appeals illustrate or show or establish how the uniformity and proper harmony of the maritime law in its international or interstate relation can be interfered with in the case at bar.

These questions arise automatically:

1. What is the general maritime law?

a. What are its characteristic features?

1. How can they be prejudiced by a local compensation insurance act applicable to citizens of this state who are not engaged in interstate or foreign commerce?

2. How can they be prejudiced by enforcement of a contract of insurance entered into between two parties for the benefit of a third party in a local or state court given exclusive jurisdiction to enforce that contract—patently not a maritime contract.

b. What constitutes the "uniformity and proper harmony" of the general maritime law?

1. Is this "uniformity and proper harmony" compulsory in all matters to which the general maritime law extends generally, or it is vital only in its international or interstate relations?

[fol. 101] 2. Wherein does the Workmen's Compensation Act—not maritime law—come into conflict with any superior maritime law which has no compensation features or remedies—when applied to the facts found in the case at bar?

Direct answers to these questions are not found in the Decision of the District Court of Appeal. No effort is made by that Court to settle these questions for future guidance in other cases.

The following analysis may assist the Court in apperciating the tremendous importance of these questions:

I

Extent of Admiralty Jurisdiction

Jurisdiction of the Admiralty Courts rests upon a constitutional grant to the Federal government. Congress conferred upon the District Court of the United States original and exclusive jurisdiction of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it.

"• • • The admiralty and maritime jurisdiction of the United States • • • is to be interpreted by a more enlarged view of its essential nature and objects and with reference to analogous jurisdictions in other countries constituting the maritime commercial world • • •"

Benedict on Admiralty, Vol. 1, p. 8.

"• • • Those powers of government which especially *affect our intercourse with foreign nations and their subjects or regulate matters of interstate concern* and the rights in one State of citizens of another State • • • were granted to the general government. *By this distribution of power our intercourse with other nations was to be so regulated as to make us one of the family of nations,* acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and the several States were to be prevented from making conflicting laws on subjects of national interest and so destroying the harmony which alone could make us and keep us a nation, the United States." (Underscoring ours.) [fol. 102] Benedict on Admiralty, Vol 1, p. 10.

"• • • At the time of the adoption of the Constitution, there were no courts of the United States and a purely ad-

miralty court was not necessarily contemplated as none has since been established, but it was evident that in the multifarious transactions on the ocean, seas, lakes and rivers, *the highways of our intercourse and commerce among the several States and with the nations of the world* questions would continually arise upon which *the law of nations and the law of maritime commerce, the maritime law.* * * * In no manner could a uniform administration of *that great branch of the law of nations, known as the general maritime law,* be secured except by the transfer of all cases of admiralty and maritime jurisdiction to the cognizance of the national judiciary and by committing to Congress the authority to make all laws necessary and proper to carry into execution the power so vested, as by altering and amending the maritime law under which such cases are adjudged. In the exercise of their admiralty jurisdiction, the Federal courts are not bound by State statutes and State legislation, though recognized in remedial aspects consistent with the general principles and uniform operation of the maritime law, is not permitted to displace the characteristic features of the maritime law or to impair that uniformity which *in international and interstate relations* the Constitution designed to establish in conferring the maritime power upon the United States." (Underscoring ours.)

Benedict on Admiralty, Vol 1, pages 12 and 13.

"It is true that the commercial power conferred by the Constitution is one without limitation. It *authorizes* legislation with respect to all subjects *of foreign and interstate commerce,* the persons engaged in it, and the instruments by which it is carried on. And legislation has largely, so far as commerce by water is concerned, with the instruments of that commerce. * * *" (Underscoring ours.)

Sherlock vs. Alling, 93 U. S. 99, p. 103.

"When the Constitution of the United States was adopted, each state had its own regulations of pilotage. While this subject was embraced within the grant of power *'to regulate commerce with foreign nations and among the several states.'* (Art. I, Sec. 8.) (Underscoring ours.)

[fol. 103] *Anderson vs. Pacific Coast S. S. Co.,* 225 U. S. 187, p. 195.

"The jurisdiction thus conferred embraces two classes of civil cases. The first respects *acts or injuries done upon navigable waters.* The second respects *contracts* purely maritime, and *touching rights and duties pertaining to commerce and navigation.*" (Underscoring ours.)

Netherlands, etc. Co. v. Gallagher, 282 Fed. 171, p. 173.

"*There is doubtles an internal commerce which is subject to the control of the states. The power delegated to Congress is limited to commerce among the several states or with foreign nations and with the Indian tribes.* This limitation necessarily excludes from federal control all commerce not thus distinguished, and of course that commerce which is carried on entirely within the limits of a state and does not extend to or affect other states. * * *

The Daniel Ball, 77 U. S. 557, p. 565.

The jurisdiction of the Federal courts is a jurisdiction to regulate interstate and foreign relations; the Federal courts in admiralty only with respect to interstate and foreign commerce and the ships that carry it, or contracts with or torts to persons that directly assist in its continued movement. This jurisdiction of the admiralty court in maritime matters therefore exists only because of interstate and foreign commerce as such.

The Van Smith, 4 Wheaton 438;
The Lottawanna, 21 Wall. 558;
Hughes on Admiralty, 2nd Ed. Sec. 49.

It is proper enough to include those matters incidental to, or relating to, or necessary to, the continuance or furtherance of this international and foreign commerce, including the regulation of ships while actually engaged therein and persons assisting therein; to include the traffic rules of the sea, the questions of contracts and torts arising therefrom, and of damages, towage, pilotage, and such other matters as are incidental to interstate and foreign commerce. The admiralty court administers the maritime law, which is the [fol. 104] international law of nations, applying to commerce and ships navigating the sea in carrying that commerce. The maritime law originated with the use of ships in transportation; ships, in turn, originated from the neces-

sities of transportation of commerce; all three, namely, maritime law, ships and commerce have developed through the centuries together. Fundamentally, transportation is the basis of all three. Ships would not navigate the seas but for the needs of transportation and commerce. The maritime law would be unknown were it not for transportation and commerce in its foreign and interstate relations.

II

Defining "Navigable Waters"

In Daniel Ball, 77 U. S. 557, 563, cited in 1870, the Supreme Court of the United States says:

"A different *test* must therefore be applied *to determine the navigability of our rivers.* They construe navigable waters of the United States within the meaning of the acts of Congress in contradistinction from the navigable waters of the states, when they form in their ordinary condition by themselves, or by uniting with other waters a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water." (Underscoring ours.)

On page 565:

"*There is doubtless an internal commerce which is subject to the control of the states.* The power delegated to Congress is limited to commerce or among the several states or with foreign nations and with the Indian tribes. *This limitation necessarily excludes from federal control all commerce not thus distinguished,* and of course that commerce which is carried on entirely within the limits of a state and does not extend to or affect other states. So far as she was employed in transporting goods destined for other states or goods brought from without the limits of Michigan and destined to places within that state, she was engaged in commerce between the states, and however limited that commerce may have been, she was so far as it went, subject to the legislation of Congress. She was employed as [fol. 105] an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from

one state to another, commerce in that commodity between the states is commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one state and some in two or more states, does in no respect affect the character of the transaction to the extent in which each agency acts in that transportation. It is subject to the regulation of Congress." (Underscoring ours.)

These views and this definition of the navigability of waters was reaffirmed in The Montebello, 87 U. S. 430, decided in 1874. Whether waters are "navigable waters" or not is dependent upon the transportation over those waters of interstate or foreign commerce. The admiralty courts, therefore, have jurisdiction, not over the waters because they are navigable in fact but have jurisdiction over the waters and injuries occurring upon those waters when those waters are navigated in and in connection with interstate and foreign commerce.

III

Defining the Word "Vessel"

Petitioner defines the word "vessel" to mean any watercraft used as capable or being used as a means of transportation on water. For ordinary usage that definition is sufficient. But as the word "vessel" is used in connection with maritime matters and by the admiralty courts, it calls for a more complete definition.

"Evidently, there is here a misapprehension as to the basis of admiralty jurisdiction. It does not extend to ships merely because they are ships, *but to commerce and navigation*, and *to ships* only because they are and *while they are used in commerce and navigation.*" (Underscoring ours.)

Olson v. Birch, 133 Cal. 479, p. 483.

"* * * but here the contract for holding the corn in storage did not concern navigation. It was to be performed at a time when the vessel was not engaged in commerce or navigation or in preparation therefor. * * *"

The Richard Winslow, 71 Fed. 426, p. 428.

[fol. 106] "Because the ship was afloat when used as a warehouse does not render the contract for storage a maritime contract, any more than in the case of a floating warehouse, a floating saloon, or a floating church. Such employment does not pertain to navigation with which alone the admiralty is concerned. * * *"

The Richard Winslow, supra, p. 429.

"* * * The jurisdiction * * * extends only to such vessels when they are engaged in commerce between different states or territories. It does not apply to vessels engaged in domestic commerce of a state; * * *"

The Propeller Genesee Chief et al. v. Fitzhugh et al., 53 U. S. 443, p. 457.

IV

Defining the Word "Maritime"

There is a definite distinction between the word "maritime" and the word "marine," though both are used freely in matters pertaining to the sea.

"A service is not necessarily a maritime service, because rendered on the high seas or on navigable waters. It must have some relation to commerce or navigation; *some connection with a vessel employed in trade*, with her equipment, her preservation, or the preservation of her crew."

Cope v. Vallejo Drydock Co., 16 Fed. 924, p. 925.

"*The same transaction may be maritime in one case and not maritime in another.* As emphasizing this distinction, there is the maxim that 'a ship is made to plough the seas, and not to lie at the walls.' Hence, wharfage rendered to a ship while loading or unloading, or in her regular use as a freight-earning enterprise, is a maritime contract.

"On the other hand, wharfage to a ship laid up for the winter while waiting for the season to open is not maritime.

"This distinction is further illustrated by the decisions in relation to watchmen on vessels. Those who are watchmen while vessels are in port during voyages are considered as having made a maritime contract, but those who have charge of her while laid up have no such contract." (Underscoring ours.)

Hughes on Admiralty, 2nd Ed. p. 22.

[fol. 107] This principle is adopted in the matter of Industrial Accident Commission vs. Payne, 42 S. Ct. 489. The principle of that decision is that the degree of connection of the instrumentality with interstate commerce is to be determined by its service and relation to actual commerce at the moment of the injury, not its past or future service.

"If more is required than the locality of the wrong in order to give the court jurisdiction, the relation of the wrong to maritime service, to navigation and commerce or navigable waters, was quite sufficient."

Atlantic Transport v. Imbroveck, 234 U. S. 52, p. 62.

"But in cases of this character, the locality of the injury is not the sole and exclusive test; the services to be performed must also be of a maritime nature. This was illustrated in Grant Smith-Porter v. Rohde, 257 U. S. 469 * * *"

Ex Parte Havard (Ala.) 100 So. 897, p. 900.

See also:

Eclipse Mill Co. v. Department of Labor and Industries, 251 Pac. 130.

Grant Smith-Porter v. Rohde, 257 U. S. 469.

From the foregoing and many other decisions carefully studied, it is plain that the courts in admiralty matters using the word "maritime" must first ascertain that the subject to which it is applied pertains to commerce and navigation in its interstate and foreign aspects. A tort is not a "maritime tort" merely because it occurs upon navigable waters. A contract is not a "maritime contract" merely because it involves or pertains to a ship afloat. A service is not a "maritime service" merely because it is to be performed or partially performed upon navigable waters or upon a ship afloat on navigable waters and a business is not a "maritime business" merely because part of the business involves the use of navigable waters.

"It is now established that it is not merely the uniformity of the general maritime law which is essential but the uniformity of the general maritime law *in its interstate and* [fol. 108] *international aspect*, and that maritime injuries

of a local significance may still be governed by the state compensation act." (Underscoring ours.)

Grant Smith-Porter Ship Co. vs. Rohde, supra;
Western Fuel Co. vs. Garcia, 42 S. Ct. 89;
State, etc., New York vs. Nordenholt Corp. 42 S. Ct. 473;
Miller's Ind. Underwriters vs. Braud, 46 Sup. Ct. 194;
Eclipse Mill Co. vs. Dept. of Labor and Industries, 251 Pac. 130.
City of Oakland vs. Industrial Accident Commission, 198 Cal. 273; (Paul.)
Alaska Packers Association vs. Industrial Accident Commission, 73 C. D. 330.

The Award of the Commission Does Not Conflict with the Admiralty Jurisdiction

The position taken by the Commission is an alternative one: first, on the facts as found in the case at bar that the admiralty courts had no jurisdiction; and, secondly, that the state courts, i. e., Industrial Accident Commission had concurrent jurisdiction with the admiralty courts.

I

The Facts Conferred no Jurisdiction upon the Admiralty Courts

That the admiralty courts are without jurisdiction from the facts as stated in the case at bar is shown in the following way:

1. The business of the employer was a local pleasure concession business in no way connected with that commerce and navigation as controlled by the admiralty courts. It was not primarily a maritime business. Though it involved a use of the sea, of the operation of vessels upon navigable waters, and the carriage of passengers for hire, it still was not a maritime business in the sense that the word "maritime" is used in connection with the maritime law in the admiralty courts. It was a business purely local [fol. 109] to the city of Santa Monica. There was no port

to port commerce, no interstate or foreign commerce carried by these vessels. It should be termed a "marine" or "non-maritime" business rather than a "maritime" business.

2. The deceased employee was neither on board nor a member of the crew of any vessels carrying passengers for hire at the time of the injury. He was merely on board an eighteen-foot skiff, sent out from the land to reach a deserted drifting vessel, which at the time it started to drift was equivalent only to a floating dock or raft or any other piece of valuable personal property. This vessel while anchored just prior to its drifting and during the time it drifted was not engaged in the navigation of the seas for the transportation of any commerce, either local or interstate or foreign in character.

3. The injury and death of the deceased employee was not a maritime tort. The skiff in which he was riding was not engaged either directly or indirectly in interstate and foreign commerce or any commerce. There is nothing but the one element "locality" to support a conclusion that this was a maritime tort, and something more than mere locality is necessary to constitute a maritime tort.

4. The deceased employee was not working under a maritime contract at the time of the injury in the business of the employer. (Grant Smith-Porter v. Rohde, 257 U. S. 469; The Richard Winslow, 71 Fed. 426, p. 428; Ex Parte Havard (Ala.) 100 So. 897, p. 900; Eclipse Mill Co. v. Department of Labor and Industries, 251 Pac. 130; Hughes on Admiralty, 2nd ed. p. 22.

5. The admiralty courts have no jurisdtction over citizens of the same state engaged in a business which is not maritime in character, nor over citizens of the same state not engaged in a maritime business, in any action between these [fol. 110] citizens, where the rights and liabilities involved in that action are dependent upon the statutes of the state, and there is no conflict between that statute and any superior maritime law. Any jurisdiction of the admiralty courts over these parties in other matters not relating to compensation rights and liabilities, does not conflict with the sole and exclusive jurisdiction of the state courts over these

same parties at the same time in actions involving rights and liabilities under the Compensation Act.

"In the cause now under consideration, the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the State Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. *The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist.*" (Underscoring ours.)

Miller's Indemnity Underwriters v. Braud, 257 U. S. 59; 46 Sup. Ct. 194.

"The Workmen's Compensation Acts the court had under consideration in these cases are no more exclusive than our own. Indeed, if there be a difference in this respect, ours is the more exclusive. *Not only is it compulsory rather than elective, but by express declaration it withdraws from private controversy and from the jurisdiction of the courts all controversies arising over the right to compensation for personal injuries received by a workman in an extrahazardous occupation.* Its exclusive features are further exemplified by the fact that it expressly declares that it is intended to apply 'to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state.' (Rem. Comp. Stat. Sec. 7674.)

"Measured by the test the authoritative court has laid down, it is our opinion that the workmen here under consideration are within the terms of the Workmen's Compensation Act, and that their employers are liable to contribute to the accident fund as required by the act. *Manifestly it seems to us, that the work in which the workmen are engaged is purely local in its nature, that it has no direct relation to commerce or navigation, and that its* [fol. 111] *regulation by the state will work no material prejudice to any characteristic feature of the general maritime law, nor interfere with the harmony or uniformity of*

that law in its international or interstate relations. **These being the circumstances, in the language of the last of the cited cases;**

'The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist.' " (Underscoring ours.)

Eclipse Mill Co. v. Department of Labor and Industries, 251 Pac. 130 P. 133.

The compensation law does not conflict with any superior maritime law, for the maritime law does not prescribe any liability or relief, between employer and employee for the payment of compensation. The maritime law has no such provisions as are set forth in the Compensation Act. Without such provisions, the admiralty courts have no jurisdiction over employer and employee in actions involving compensation rights and liabilities.

"When a compensation act supersedes other state laws touching a liability for damages which depend upon the common law and state statutes, it does not come into conflict with any superior maritime law. And this is true whether the award under the act is made as upon an implied agreement or otherwise. (*Industrial Comm. v. Nordenholt Corp.*, supra, pp. 275-6.) * * * the United States Supreme Court held that application of the local law would not work material prejudice to any characteristic feature of the general maritime law. In *Grant Smith-Porter Ship Co. v. Rhode, supra*, the court held that, while the *general* admiralty jurisdiction *extends to a proceeding to recover damages* resulting from a tort committed on a vessel in process of construction when lying in navigable waters, *under the 'circumstances stated* the exclusive features of the Oregon Workmen's Compensation Act * * * would apply and abrogate the right to recover damages in an admiralty court which otherwise would exist.' In a still more recent case, in which the record disclosed facts said by the court to be sufficient to show a maritime tort, to which the *general* admiralty jurisdiction would extend, the courts sustained an award made under the Texas State Compen-[fol. 112] **sation Act. * * * The obvious intent of the act was to substitute its procedure for the former method of settling disputes arising between those occupying the strict**

relationship of master and servant, or employer and employee, by means of actions for damages * * * " (Underscoring ours.)

Alaska Packers Association v. Industrial Accident Commission, 73 C. D. 330, p. 331.

The State has exclusive jurisdiction over its citizens, where the status of employer and employee is shown, in compensation matters just 'as truly as it does in probate matters. In actions brought under the compensation act, the state courts have exclusive jurisdiction, for the reason that in applying the State Workmen's Compensation Act to the rights of the parties, the Commission is not applying the law maritime or state statutes which merely supplement it. The State Compensation Act is not maritime law. It does not conflict with maritime law in compensation matters. The maritime law prescribes no compensation liability or rights to thereby invoke the jurisdiction of the admiralty courts.

That this is so is emphasized by the Supreme Court of the United States, in the following language:

"The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

Miller's Ind. Underwriters v. Braud, 257 U. S. 39; 46 Sup. Ct. 194.

Without the jurisdiction of the admiralty courts being invoked, (and that cannot be, where there is no maritime law of this kind to administer), there is no conflict between the jurisdiction of the state court and the admiralty court.

In Kennerson v. Thames Towboat Co., 89 Conn., 367, the court said:

"The contract in question (i. e., of employment) may be assumed to be a maritime one. That would give the [fol. 113] admiralty court the right to take jurisdiction over it. It could not take from our court jurisdiction over a contract made in Connecticut by citizens of Conn. nor prevent its enforcement whenever it is operative by the procedure of the statute of its origin. This contract is to be interpreted and enforced by the application of the same principles accorded any contract, * * * Plainly,

this proceeding is a personal action, and not one in rem. The Admiralty Court has not exclusive jurisdiction. Knapp, Stout and Co. v. McCaffrey, 177 U. S. 638, 643; Schoonmeker v. Gilmore, 102 U. S. 118; Leon v. Galceran, 78 U. S. (11 Wall.) 185; The Belfast, 74 U. S. (7 Wall.) 624; The Hine v. Trevor, 71 U. S. (4 Wall.) 555, 567, 568; Manchester v. Massachusetts, 139 U. S. 240."

See also

Red Cross Line v. Atlantic Freight Co., 264 U. S. 109.

"The action here is not one to recover on a contract, maritime or otherwise. The liability of the employer to pay compensation to the injured employee arises from the Workmen's Compensation Act, to which Peterson and the petitioner were subject, rather than from any agreement of the parties. The law operates on the status of the parties, and affixes certain rights and obligations to that status. (North Alaska Salmon Co. v. Pillsbury, 174 Cal. 1, 2, 162 Pac. 93, L. R. A. 1917E, 642.) Under the circumstances here shown to exist, application of the California Workmen's Compensation Act will not work any material prejudice to any characteristic feature of the general maritime law." (And cases cited.)

Alaska Packers Association v. Industrial Accident Commission, 73 C. D. 330, p. 332.

As stated by this Court, the action in the above cited case was not an action on a maritime contract. Though this court did not so state, we may also add the action was not one for damages on a maritime tort. In the case at bar, the action filed with the Industrial Accident Commission was neither an action in tort nor an action on a maritime contract. It was an action solely to recover compensation under the statute. (Cudahy Packing Co. v. Parramore, 263 U. S. 418, 30 A. L. R. 432, p. 535; Quong Ham Wah Co. v. Industrial Accident Commission, 184 Cal. 26.) [fol. 114] It was also an action to enforce and collect on an insurance contract made for the benefit of a third person.

"• • • *But with reference to a great variety of matters touching the rights and liabilities of persons engaged*

in commerce, either as owners or navigators of vessels, the laws of Congress are silent, and the laws of the State govern. The rules for the acquisition of property by persons engaged in navigation, and for its transfer and descent, are with some exceptions, those prescribed by the State to which the vessels belong; *and it may be said generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit.* In our judgment, the statute of Indiana falls under this class. Until Congress, therefore, makes some regulation touching the *liability of parties for marine torts resulting in the death of the persons injured,* we are of opinion that the statute of Indiana applies, giving a right of action in such cases to the personal representatives of the deceased, and that, as thus applied, *it constitutes no encroachment upon the commercial power of Congress.*" (Underscoring ours.)

Sherlock v. Alling, 93 U. S. 99, p. 103.

"In conferring upon Congress the regulation of commerce, *it was never intended to cut the states off from legislating on all subjects relating to* the health, life and safety of their citizens, *though the legislation might indirectly affect the commerce of the country.* Legislation, in a great variety of ways, may affect commerce and persons engaged in without constituting a regulation of it, within the meaning of the Constitution." (Underscoring ours.)

Sherlock v. Alling, 93 U. S. 99, p. 103;
Cooley vs. Port Wardens, 12 How. 299, 320; 13 L. ed. 996, 1005;
Pacific Mail S. S. Co. vs. Joliffe, 2 Wall. 450, 459; 17 L. ed. 805, 807;
Ex Parte McNeil, 13 Wall. 236, 241, 20 L. ed. 624, 626;
Wilson vs. McNamee, 102 U. S. 572, 26 L. ed. 234;
Olson vs. Smith, 195 U. S. 332, 341, 49 L. ed. 224, 229, 25 Sup. Ct. Rep. 52;
Anderson vs. Pacific Coast S. S. Co., 225 U. S. 187, 195, 56 L. ed. 1047, 1051, 32 Sup. Ct. Rep. 625.

[fol. 115] If the facts in this case do establish jurisdiction of the Admiralty Courts, that jurisdiction is not an exclusive jurisdiction, but only a concurrent jurisdiction, which is abrogated by the exclusive features of the State statute and jurisdiction of the State courts control

Conceding for argument's sake only that the business was maritime, the contract was maritime, and the services being rendered at the time of the injury was maritime, the admiralty courts did not have exclusive jurisdiction, but, on the facts peculiar to this case, the state courts had concurrent jurisdiction. The jurisdiction of the state courts was dominant, excluding that of the admiralty courts, for the following reasons:

(1) Under the saving clause of the Judiciary Act (Secs. 24 and 256, Jud. Code), the state courts have exercised concurrent jurisdiction with the admiralty courts in practically all proceedings of an admiralty and maritime nature, except where they

(a) "contravened an applicable Act of Congress;"

(b) "attempted to authorize proceedings in rem in a state court"; and

(c) "attempted to regulate interstate or foreign commerce."

The Moses Taylor, 4 Wall. 411;
Hall v. De Cuir, 95 U. S. 485;
The J. E. Rumbell, 148 U. S. 1, 12.

"And the State courts within the limits embraced by this law exercise a concurrent jurisdiction in all cases arising within their respective territories, as particularly and independently as it is exercised by the old thirteen states (whose rivers are tidewaters), and where the admiralty jurisdiction has been in full force ever since the adoption of the Constitution."

Propeller Genesee Chief, 53 U. S. 443, 458

"* * * It may be said generally that the legislation of a State not directed against commerce or any of its regulations but relating to the rights and liabilities of citizens [fol. 116] and only indirectly and remotely affecting the

operations of commerce is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

Sherlock v. Alling, 132 U. S. 103, p. 104.

(2) The saving clause included later statutory remedies enacted by the states. (Leon v. Galceron, 11 Wall 85; Rounds v. Clover Port, 237 U. S. 303).

(3) Workmen's Compensation acts replace the common law remedies of the States. (Ind. Comm. v. Nordenholt, 259 U. S. 263, 276; Todahl v. Sudden & Christensen, 5 Fed. (2nd) 462, p. 464; Alaska Packers Association vs. Industrial Accident Commission, 73 C. D. 330).

(4) The business of the employer was not an integral part or in any way connected with or related to interstate and foreign commerce and navigation which are in the exclusive jurisdiction of the admiralty courts. It was purely a local business, non-maritime in nature, as shown by the following facts:

(A) Not that of carrying port to port commerce;

(B) Entirely local to the City of Santa Monica in its interests and operations;

(C) Not linked to, at the termination of, or in contact with any interstate or foreign railroad or steamship line, carrying interstate or foreign commerce; on the contrary, the business was entirely detached from and had nothing to do with interstate and foreign commerce;

(D) The employer and employee were citizens of the City of Santa Monica, and the State of California, and not engaged in interstate and foreign commerce, and adjudication of their rights, liabilities and interests was under the jurisdiction of the Commission exclusively, unless and until petitioner has shown facts establishing relationship with interstate and foreign commerce and navigation.

[fol. 117] **(5) The Maritime Law Affords No Remedy in Death Cases. The State Compensation Act Does. Therefore There is no Conflict with Any Maritime Law by the Application of the Local State Law in the Case at Bar.**

In the case at bar, the employee was drowned. It is a death case. The remedy sought is for an injury resulting in death. The maritime law furnishes no remedy and the state law may therefore be applied.

"* * * But with reference to a great variety of matters touching the rights and liabilities of persons engaged in commerce, either as owners or navigators of vessels, the laws of Congress are silent, and the laws of the State govern. The rules for the acquisition of property by persons engaged in navigation, and for its transfer and descent, are, with some exceptions, those prescribed by the State to which the vessels belong; and it may be said, generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force, upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit. In our judgment, the statute of Indiana falls under this class. Until Congress, therefore, makes some regulation touching the liability of parties for marine torts resulting in the death of the persons injured, we are of opinion that the statute of Indiana applies, giving a right of action in such cases to the personal representatives of the deceased, and that, as thus applied, it constitutes no encroachment upon the commercial power of Congress."

Sherlock v. Alling, 93 U. S. 99, p. 103,

"Indeed, with respect to injuries that result in death, it already is settled that, although the general maritime law, like the common law, afforded no civil remedy by death for wrongful act, (The Harrisburg, 119 U. S. 199, 30 L. ed. 358, 7 Sup. Ct. Rep. 140; The Alaska, 130 U. S. 201, 209, 32

L. ed. 923, 925, 9 Sup. Ct. Rep. 461,) yet a right of action created by Statute is enforceable in a state court although the tort was committed upon navigable water (American S. B. Co. vs. Chase, 16 Wall. 522, 533, 21 L. ed. 369, 372; Sherlock vs. Alling, 93 U. S. 99, 104, 23 L. ed. 819, 820,) and the liability arising out of a state statute in such a case [fol 118] will be recognized and enforced in the admiralty (The Hamilton (Old Dominion S. S. Co. vs. Gilmore), 207 U. S. 398, 52 L. ed. 264, 28 Sup. Ct. Rep. 133), although not by proceeding in rem unless the statute expressly creates a lien; The Corsair (Barton vs. Brown), 145 U. S. 335, 347, 36 L. ed. 727, 731, 12 Sup. Ct. Rep. 949)."

A parallel situation is presented in the cases of seamen and stevedores, (the latter are now classified as seamen—International etc. v. Haverty, 47 Sup. Ct. Rep. 19). They are working under a maritime contract at the time of suffering an injury in the course of their work. The admiralty courts generally had jurisdiction over seamen and stevedores, but in tort proceedings for damages, the admiralty court is unable to assert its jurisdiction over these torts, where they occur on land. The jurisdiction of the admiralty court is limited entirely to torts occurring upon navigable waters.

The reason for this limitation to the jurisdiction of the admiralty courts is best stated by the court in State Industrial Commission of New York v. Nordenholt, 259 U. S. 263, 276:

"The stevedores' contract of employment did not contemplate any dominant federal rule concerning the master's liability for personal injuries *received on land*" (Underscoring ours).

And again:

"Consequently, when the compensation act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law."

See also:

Todahl vs. Sudden & Christensen, 5 Fed. (2nd) 462, p. 464.

These two decisions establish the proposition that there is no maritime or federal law to regulate the rights of maritime workers injured on land; and, therefore, the local law of the state applies and governs. Similarly, there is no dominant maritime or federal law regulating or prescribing the rights, liabilities or remedies of a maritime worker killed on navigable waters. The application of the local [fol. 119] state law, i. e., the Workmen's Compensation Act, in the case at bar, therefore, does not contravene any applicable act of Congress; does not come into conflict with any superior maritime law, and the state court has jurisdiction under the circumstances and facts found in the present case. This is established definitely in a death case, essentially local in character, as follows:

"The Act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

Miller's Indemnity Underwriters vs. Braud, 257 U. S. 59, 46 Sup. Ct. Rep. 194.

The Braud Case just cited is the one particularly relied upon by this Court in this State, in rendering the decisions in the Paul Case, City of Oakland, v. Industrial Accident Commission, 198 Cal. 273, and the Peterson Case, Alaska Packers Association v. Industrial Accident Commission, 73 C. D. 330.

In the case at bar, assertion of jurisdiction by the state courts and application of the provisions of the Workmen's Compensation Act, do not conflict with any superior maritime law, for there is no superior maritime law in death cases to come into conflict with; nor does it disturb the uniformity of the law maritime. The Workmen's Compensation Act furnishes the only remedy in any court or under any law to meet the rights of the dependents of the deceased employee Brooke.

III

Answering Petitioner's Contentions

Petitioner's whole argument with the District Court of Appeal was based upon the opinion of the United States

Supreme Court, as expressed in the matter of Southern Pacific Company v. Jensen, 244 U. S. 205, where Mr. Justice McReynolds said:

[fol. 120] "* * * The remedy which the compensation statute attempts to give is of a character wholly unknown to the common-law, incapable of enforcement by the ordinary processes of any court, and is not saved to suitors from the grant of exclusive jurisdiction."

Compare the foregoing language of Mr. Justice McReynolds in the Jensen case with the language of this same Justice in a later decision, i. e., the Nordenholt case, wherein he says:

"Consequently when the compensation act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law."

This decision by Mr. Justice McReynolds in the Jensen Case was a startling decision, for prior to that time it had been assumed that state workmen's compensation acts would apply to any fatal maritime injury, as the federal law maritime had no provision for fatal injuries. (See No. Pacific Co. vs. Industrial Accident Commission, 174 Cal. 346). That the Supreme Court of the United States did not intend to promulgate or at least to abide by the doctrine of law as hereinabove quoted in the Jensen Case is evidenced by the history of the decisions handed down by that court thereafter. This is most strongly evidenced by the language of the District Court (S. D. Texas), 15 Fed. Rep. (2nd) 54, where the court says:

"While on the general proposition my view of the matter is that expressed by Mr. Justice Brandeis in his dissenting opinion in *Washington v. Dawson*, 264 U. S. 219, 44 S. Ct. 302, 68 L. Ed. 646, especially in that part of it which constitutes a most admirable contribution to the science of the law, beginning at page 235 of 264 U. S. (44 S. Ct. 302) to the end, and so feeling I would let my mind be bold to find an exception here, it is not necessary for me to do, *for the Supreme Court of the United States, in its slow but inevitable back trek* has already made the exception in re-

fusing writ of certiorari (46 S. Ct. 353) in *Southern Surety Co. v. Crawford* (Tex. Civ. App.) 274 S. W. 280, and in affirming the Supreme Court of Texas in *Miller's Indemnity Underwriters vs. Braud*, 270 U. S. 59, 46 S. Ct. 194, 70 L. Ed. —, 1926 A. M. C. 310 * * * ." (Underscoring ours).

[fol. 121] This "inevitable back trek," referred to in the decision just cited, starts with the decision of the United States Supreme Court in Western Fuel, etc. v. Garcia, 257 U. S. 233, decided in October, 1921, where a maritime worker was killed on board a vessel and the court said:

"It is an established doctrine that no suit to recover damages for the death of a human being caused by negligence may be maintained in the admiralty courts of the United States under the general maritime law. * * * The subject is maritime and local in character and the specified modification or supplement to the rule applied in admiralty courts when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations."

In the same Term (October 1921) the United States Supreme Court in Grant Smith-Porter Ship Co. vs. Rohde, 257 U. S. 469, noted a further exception to the rule laid down in the Jensen Case. An employee was injured while working upon an uncompleted vessel on navigable waters, and the provisions of the Workmen's Compensation Act were applied, because the work was not being done under a maritime contract, though it was a maritime service occurring upon navigable waters. The court said:

"Their rights and liabilities had no direct relation to navigation and the application of the local law can not materially affect any rules of the sea whose uniformity is essential."

In the next decision (October, 1922), the United States Supreme Court announced a further re-statement of the rule found in the Jensen case, in their decision rendered in

Great Lakes etc. Co. vs. Kerejewski, 261 U. S. 479. Kerejewski received injuries upon navigable faters, causing his death. The Court said, at page 480:

"While performing maritime service to a completed vessel afloat, he came to his death upon navigable waters as the result of a tort there committed. The rules of the mari- [fol. 122] time law supplemented by the local death statute applied to fix the rights and liabilities of the parties. (Western Fuel Co. vs. Garcia, 257 U. S. 233."

The next decision by Mr. Justice McReynolds of the United States Supreme Court is found in the matter of State Industrial Commission of New York v. Nordenholt, 259 U. S. 263, which decision has been heretofore analyzed and discussed, and which particularly holds at page 276:

"Consequently, when the Compensation Act superseded other state laws touching the liability in question, it did not come into conflict with any superior maritime law."

The last decision by the United States Supreme Court on this point is that of Miller's Indemnity Underwriters v. Braud et al, 257 U. S. 59, 46 Sup. Ct. Rep. 194, (see page 195), decided in February, 1926. By this decision the United States Supreme Court has still further receded from the position taken in the Jensen case, has promulgated the rule now followed by this Court in the Paul case and in the Peterson case, supra.

The rule therefore is now that the application of state workmen's compensation acts to maritime injuries or to injuries occurring upon navigable waters is forbidden only where the application would interfere with the characteristic harmony and uniformity of that law in its interstate and international aspects.

Where the Subject-matter is Local in Character and the Application of the Local Law does not Conflict with the Maritime Law and Would Not Defeat the Uniformity Aimed at by the Constitution in Matters of Interstate and

Foreign Commerce, the Local Law May Be Applied in the State Courts or Commissions

That this is the true rule is particularly emphasized by the different Supreme Courts in the various states.

[fol. 123] Los Angeles Shipbuilding & Drydock Corp. vs. Industrial Acc. Com., 57 Cal. App. 352, 792;
Southern Surety Co. vs. Crawford, 274 S. W. 280;
Ex Parte Havard, 100 So. 897;
Miller's Ind. Underwriters Co. vs. Bourdreaux, 245 S. W. 1025, 261 S. W. 137;
Maddern vs. Fox Film Co., 200 N. Y. S. 344, 143 N. E. 764;
McBride vs. Standard Oil Co., 188 N. Y. S. 90;
Wildfeuer vs. Miller & Gold, 188 N. Y. S. 81.

In the case of Ex parte Havard, 100 So. 897, the Court says:

"Here the contract is not of a maritime nature; * * * so, also, in the instant case, the employer was engaged in the business of running a planing mill and lumber yard; *certainly a non-maritime business.*" (Underscoring ours.)

In a very recent decision, *Eclipse Mill Co. vs. Department of Labor and Industries*, 251 Pac. 130, the Supreme Court of Washington lays down the rule that where

"neither the employment nor the activities of the employee or those of his employer HAVE ANY DIRECT RELATION TO NAVIGATION AND COMMERCE IN ITS INTERNATIONAL AND INTERSTATE ASPECTS, the assertion of jurisdiction over the parties by the state courts will not be disturbed in compensation matters." (Capitals ours.)

Conclusion

In the decision just rendered by the District Court of Appeal in this matter, the Court correctly states the true rule to be as follows:

"The rationale of these decisions being founded on the necessity of preserving unimpaired the harmony and uni-

formity of the characteristic features of maritime law, *some mitigation of the rigor of the rule has been deemed permissible, in a limited class of cases*, where the matter is one of mere local concern and the enforcement of the local enactments will work no material prejudice to maritime rules in general. * * *" (Underscoring ours.)

[fol. 124] It is our contention that the District Court of Appeal has failed to approach the question presented in this proceeding with the proper attitude and conception of the effect of the Workmen's Compensation Act and has inadvertently misapplied the hereinabove quoted rule as stated by that Court to the facts in the case at bar.

We therefore respectfully petition this Court to grant the hearing in this matter to the end that the apparent conflict between this decision as rendered by the District Court of Appeal with the decisions of this Court in the Paul and Peterson cases, supra, may be dissolved. The necessity for an harmonious application of the doctrines laid down by this Court in the Paul and Peterson cases, supra, in future decisions is of tremendous importance to this Commission in the administration of the Workmen's Compensation Act and unless the apparent lack of harmony now created by this recent decision of the District Court of Appeal be removed, the Commission will undoubtedly be confused and hampered in future cases.

Respectfully submitted.

G. C. Faulkner, Counsel for Respondent Industrial Accident Commission.

[fol. 125] EXHIBIT TO PETITION FOR HEARING

IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION TWO

Civ. 5532

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., Petitioner,

vs.

THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF California, Sarah Jane Brooke, and John Arthur Brooke, Respondents

On Petition for Writ of Review

For Petitioner: E. R. Young, H. R. Kelly, E. L. Williams.
For Respondent Commission: G. C. Faulkner.

This is a proceeding in certiorari to review an award of the Industrial Accident Commission for payment of $150 for the burial expenses of John James Uttley Brooke, an unmarried minor nineteen years of age, who was drowned in Santa Monica Bay on April 8, 1926, while in the service of the Morris Pleasure Fishing, Inc. The petitioner was the insurance carrier of the employer; and the question presented is whether the case must be relegated to the exclusive cognizance of a court of admiralty, or may be brought within the purview of the Workmen's Compensation Act of this state.

On a petition to the Industrial Accident Commission filed by the mother and the stepfather of the deceased, hearings were had on June 10 and September 13, 1926 before the [fol. 126] Commission, which on October 6th made its findings that Brooke, while employed as a spare skipper, met his death by drowning in an accident occurring in the course of, and arising out of, his employment; that he was not at the time engaged in maritime employment; and that both he and his employer were subject to the provisions of the Workmen's Compensation Act. The Commission further found that neither the mother nor the stepfather of the deceased was dependent upon him; and accordingly the

award was limited to the reasonable expenses of burial, which were fixed at $150. Application for a rehearing was filed by the employer; and its insurance carrier, which was, however, denied.

The evidence taken at the hearings showed the facts to be as follows. The Morris Pleasure Fishing, Inc., is a corporation which carries on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels, for the accommodation of the public seeking recreation in deep-sea fishing. In the fishing seasons its practice has been to have excursions daily from Santa Monica Bay to the ocean fishing grounds, a distance of three to five miles, with fixed charges both for half-day and full-day trips. For use in this business the company has several vessels, ranging from four to fourteen tons registry, equipped with gas engines and capable of cruising a distance of 500 miles. The business has been confined entirely to the maintenance of these pleasure-fishing vessels and the transportation of patrons to and fro by water, except that excursionists have also been supplied with bait. As one of the necessary incidents of its business the company employs seamen to navigate its vesels; and before and at the time of the accident which occasioned Brooke's death, he was in the company's employ as an apprentice navigator and seaman. In the capacity he made daily trips as required with the Company's vessels, and at times substituted as "spare skipper" for one of the regular skippers. On April 8, 1926, one of the company's fishing vessels called "W. K.," of about seven tons registry, was moored, with [fol. 127] no one aboard, in Santa Monica Bay about three-quarters of a mile to a mile from the pier. A storm having arisen, the vessel broke from her moorings early in the afternoon, and began to drift toward the shore. In an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employee, named Gregory, put off from the pier with the captain himself, in a boat about eighteen feet long, with the purpose in mind of boarding the "W. K." and returning her to her anchorage. But as they neared the drifting vessel, their boat was capsized by a heavy wave and all three were drowned.

The petitioner here contends that Brooke's employer was engaged exclusively in a maritime industry; that its contract with Brooke was for maritime services alone; and that Brooke's life having been lost in such service in navigable waters of the United States, the rights and liabilities of the parties are to be determined by the general maritime law, and hence there was no jurisdiction in the Industrial Accident Commission to conduct any hearing or to grant any award.

The Commission does not dispute the fact that the casualty occurred in navigable waters; but it contends that as the business of the employer was a pleasure business, there was not a maritime contract touching rights and duties pertaining to commerce or navigation in a way to invoke the rules of maritime law and exclude the case from the juridical competency of the state tribunals, and that the matter is one merely of local concern. In this connection it is argued that federal jurisdiction is not broadly conferred by reason of the navigability of waters, but is limited to a regulation of interstate and foreign commerce, in consequence of which admiralty takes cognizance only of these maritime controversies which have a commercial nexus, and that the exercises of its powers is conditioned upon the synthesis of navigable ships, engagement in commerce and the law of the sea.

[fol. 128] It is not essential, however, that for the purpose of admiralty jurisdiction a vessel should be in commercial service. In Reppert v. Robinson, 20 Fed. Cas. No. 11703, it was said by Judge Taney: "The manner in which a vessel is actually employed cannot affect the question of jurisdiction. It depends upon her character; and it does not rest with the owner to confer or take away the admiralty jurisdiction, at his pleasure, by the mode or trade in which he afterwards employs her." And in the General Cass, 1 Brown Adm. 334 (10 Fed. Cas. No. 5307), the rule is thus stated: "The true criterion by which to determine whether any water craft, or vessel, is subject to admiralty jurisdiction is the business or employment for which it is intended, or is susceptible of being used, or in which it is actually engaged, rather than its size, form, capacity or means of propulsion."

The fishing vessels of the Morris Pleasure Fishing, Inc., were capable of going out to deep waters of the Pacific Ocean, and their equipment was sufficient for a cruise of as much as 500 miles on occasions. They were therefore vessels within the definition given in section 3 of the United States Revised Statutes, which reads: "The word 'vessel' includes every description of water craft or other artificial contrivance used or capable of being used as a means of transportation on water." This statutory definition is construed in Charles Barnes Co. v. One Dredge Boat, 169 Fed. 895, 896, to include "a navigable structure capable of being used for transportation, whether intended to be, or actually, used for that purpose." In the case of these fishing boats, there was in the season a regular service, and each voyage had a place of origin and a place of destination, though the termini may not have been geographically constant. Since the ships did actually convey passengers to and fro between the anchorage in Santa Monica Bay and the deep-sea fishing banks, they were not only capable of use, but were in real use, as vehicles of nautical transportation; and while performing their service to pa- [fol. 129] trons they were in fact engaged in commerce upon navigable waters. For the transportation of persons, even on short excursions, is commerce. (The City of Pittsburg, 45 Fed. 699, 702. County of Mobile v. Kimbell, 102 U. S. 695, 702.)

It is true the vessels did not engage in the carriage of goods or passengers between fixed ports; but their use for purposes of recreation, sport or pleasure did not detract from the character of the craft. In the case of W. W. Brown, 46 Fed. 290, a former ferry-boat, propelling a floating circus from place to place on the Mississippi river for exhibition purposes, was held to be in maritime service. In like manner a dismantled steamboat converted into a pleasure barge without independent means of propulsion, and used, when towed, for picnics and excursion parties, was pronounced in the City of Pittsburg 45 Fed. 699 to be a vessel subject to the maritime law. Again, in Reinhardt v. Newport Flying Service Corporation, 232 N. Y. 115, 133 N. E. 371, a hydro-aeroplane, though not utilized commercially, was declared, when in the water as a seaplane, to be stamped by location and function as a means of water transporta-

tion, notwithstanding that while in the air it would possess no such character. And in the Public Bath No. 13, 61 Fed. 692, where a structure built on a float not permanently moored, and used as a transportable municipal bathhouse, had been swept adrift in a storm, Judge Brown, who was exceptionally well versed in admiralty law, in awarding salvage for the rescue of the contrivance, declared that use in trade and commerce was not essential to salvage, and remarked that if that were material, there would be no salvage allowed upon yachts and other water-craft for pleasure, which, he said, would be absurd.

It is thus not the use to which a craft is being put in navigable waters that fixes its status, but the use to which it is capable of being put; and there can be no doubt that [fol. 130] the vessel- owned by Brooke's employer were of a character, and in a service, rendering them amendable to the process of admiralty.

In the present case there is no charge of any delictual omission or commission. The death was due to a casualty occurring in navigable waters, and the accident, which was due to a peril of the sea, was one arising out of, and in the course of, Brooke's employment. The award of the Commission is thus not predicated on any tort, but is based on the theory that the indemnification provided by the local statute became a legal incident of the relationship created by the contract of employment. The real test of jurisdiction, however, must be found in the nature of the employment itself. If the deceased met his death while performing maritime service under a maritime contract, then, according to the rule promulgated by the United States Supreme Court, neither his contract nor the rights and liabilities growing out of it could be affected by any local statute of indemnification for injury or death. To ascertain the character of the contract we must look to its subject matter, and determine the nature and class of service which Brooke was required to render.

(State Ind. Com. v. Nordenholt Corp., 259 U. S. 263.)

A maritime contract for personal service must relate to the reparation or betterment of a vessel in aid of navigation, or to an employment directly connected with the propulsion or navigation of a ship capable of use in commerce,

or tending to enable the ship to discharge its maritime duty. (Gurney v. Crockett, 11 Fed. Cas. No. 5874.) The services which Brooke was employed to perform were not those of a landsman. He was a spare skipper, and was generally employed aboard ship in operative navigation, his labor contributing to the accomplishment of the ship's voyage. A vessel and its crew are considered a unit, whatever may be the stations of the respective members; and under Brooke's general employment he was to be classed as a seaman or mariner. On the fatal occasion he was called by his employer to assist in a maritime exigency, and to lend aid in preserving one of his employer's navigable ves- [fol. 131] sels from a marine peril. He thus went to his death in navigable waters in the performance of a service peculiarly maritime; and the casualty was incontestably a maritime accident occurring in the performance of duty. The finding of the Commission that Brooke was not at the time engaged in maritime employment is contrary to the evidence; and we thus face the question whether under the facts of the case the local law of California may have accorded to it primacy over the law of the sea.

The rule by which we must be guided has been enunciated by the United States Supreme Court in Southern Pacific Co. v. Jensen, 244 U. S. 645. Though in that case there was vigorous dissent on the part of some members of the court, and the decision has not in general had a hospitable reception, yet, through reiteration in subsequent cases, the principle of the Jensen case has been so firmly established that it must serve as the norm for resolving jurisdictional conflicts between courts of admiralty and tribunals deriving their powers under the compensation laws of the states. Under the doctrine promulgated by the august court whose arbitrament is final, when one employed in work at sea under a maritime contract directly affecting navigation or commerce receives a maritime injury, or suffers death through a maritime casualty, the ensuing rights and liabilities are dependent, under the Constitution, upon the general principles of maritime law, operating uniformly throughout the broad expanse of the nation by virtue of the grant to the federal courts of "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction." Hence any local legislation which would be destruc-

tive of that uniformity is, to the extent of the conflict, unconstitutional, since it must tend to hamper and impede freedom of navigation between the states and with foreign countries. The Central thought of the decision is thus expressed: "And plainly, we think no such legislation is valid [fol. 132] if it contravenes the essential purpose expressed by an act of congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. If New York can subject foreign ships coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The necessary consequences would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the states and with foreign countries would be seriously hampered and impeded."

So in the Jensen case the New York Compensation Act was held unavailable to the dependents of an employee killed by injury received aboard ship while performing the work of a stevedore in unloading cargo. The same rule was applied in Chelentis v. Luckenbach Steamship Co., 247 U. S. 372, where a fireman on board a steamship, while performing duties on deck during a storm, received injuries necessitating amputation of his leg. Again, in Robins Dry-dock & Repair Co. v. Dahl, 266 U. S. 449, a workman making repairs for the betterment of a vessel lying in navigable waters was precipitated into the hold by the breaking of a defective scaffold, and brought suit in the state court of New York to recover damages for injuries sustained by reason of his employer's negligence. It was held that since the work directly related to navigation and commerce, the rights and liabilities of the parties depended on general maritime law, and could not be altered or impaired by a state statute prescribing the duty of the employer relative to providing scaffolding such as to give proper protection to workmen. Accordingly an instruction that the jury might consider the local law in determining whether or not the employer was negligent was pronounced erroneous, and the judgment in favor of the employee was reversed.

[fol. 133] In Knickerbocker Ice Co. v. Steward, 253 U. S. 149, a bargeman, while doing work of a maritime nature, fell into the Hudson River and was drowned. This case presented for consideration the amendment of October 6, 1917, to the Judicial Code attempting to make compensation statutes applicable to maritime injuries. But the Court, holding such attempt to be ineffectual and reaffirming the rule of the Jensen case as to the dominance of the general maritime law, said (p. 164): "Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended, or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it, to be dealt with according to its discretion—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated, but actually established—It would defeat the very purpose of the grant."

The rule so declared applies not only to cases of personal injury suffered in a maritime employment directly affecting navigation or commerce, but also to cases arising out of a breach of maritime contract. In Union Fish Co. v. Erickson, 248 U. S. 308, there was an oral contract made with Erickson in California to proceed to Alaska, and after arrival there to serve for a year as master of a vessel at an agreed compensation. He was discharged, however, before the expiration of the term of his employment, and thereupon filed in admiralty a libel in rem for damages for breach of his contract. One of the defenses was that the contract, being oral, was invalid under section 1624 of the [fol. 134] Civil Code of California, the state in which the contract was made. In this case, as in the Jensen case, the employment was held to have been in contemplation of the recognized principles of admiralty law, which no state law can be permitted to infringe or defeat. Accordingly, the defense based on the statute of frauds of California was declared to be untenable.

The rationale of these decisions being founded on the necessity of preserving unimpaired the harmony and uniformity of the characteristic features of maritime law, some mitigation of the rigor of the rule has been deemed permissible, in a limited class of cases, where the matter is one of mere local concern and the enforcement of the local enactments will work no material prejudice to maritime rules in general. A broad line of demarcation is thus drawn between rights and liabilities existing under employments having direct relation to navigation and commerce, and those arising under contracts of a non-maritime character. In Grant Smith-Porter Co. v. Rohde, 257 U. S. 469, a carpenter was injured while engaged in work on an uncompleted vessel lying in navigable waters; and both employer and employee having treated the compensation law of Oregon as governing their relations, and the contract being non-maritime, it was deemed that no prejudice to the general maritime law would result by letting the rights and liabilities of the parties be adjudged in accordance with the local statute.

Not only is there this well defined distinction between cases arising under maritime contracts and those in which the contracts are non-maritime, but even where the contracts are maritime, cases in which injuries occur on land may have different treatment from those in which the injuries are suffered at sea. Thus in State Ind. Com. v. Nordenholt Corp., 259 U. S. 263, a longshoreman was mortally injured while working on the dock, and aiding in the discharge of a cargo of cement from a vessel lying alongside. [fol. 135] The court there said (p. 272): "When an employee working on board a vessel in navigable waters sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of the employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty

jurisdiction; but not so when the accident occurs on land." After reviewing the Jensen case and others already cited, the court in conclusion expressed itself as follows (p. 276): "The stevedore' contract of employment did not contemplate any dominant Federal rule concerning the master's liability for personal injuries received on land. In Jensen's case, rights and liabilities were definitely fixed by maritime rules, whose uniformity was essential. With these the local law came into conflict. Here no such antagonism exists. There is no pertinent Federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law."

Another instance of the application of the local law is afforded when death occurs in consequence of a maritime tort committed within the territorial limits of a state where a statute affords a right of action for damages. A case of this character is exemplified in Western Fuel Co. v. Garcia, 257 U. S. 233. In that case a stevedore was killed while at work in the hold of a vessel discharging cargo in San Francisco bay. A suit in personam, based on allegations of negligence, was instituted in admiralty by the heirs of the deceased; but, the suit having been begun more than one year after the accident, the question arose whether the state statute of limitations could be interposed as a bar. It was held that inasmuch as the alleged tort had been committed on navigable waters, admiralty could entertain juris-[fol. 136] diction; but nevertheless the right of action for a wrong committed within the territorial limits of the state was so far local in character as to be brought within the purview of the state statute without prejudice to the rule of uniformity, and hence the right to maintain the suit was subject to the bar of the local statute. The view that in a suit in admiralty to recover damages for death due to a maritime tort committed on navigable waters of a state, the rules of maritime law may be supplemented by the local death statute is reaffirmed in Great Lakes Dredge & Dock Co. v. Kierajewski, 261 U. S. 479.

Still another case of local concern is exhibited in Miller's Indemnity Underwriters v. Braud, 270 U. S. 59, in which, under the name of Miller's Indemnity Underwriters v. Bourdeaux, there had previously been a decision

by the Supreme Court of Texas, reported in 261 S. W. 137. There a diver employed by a shipbuilding company submerged himself from a small floating barge or pontoon at anchor in a navigable river 35 feet from the shore, to saw off timbers of an abandoned set of ways once used for launching ships and which had become an obstruction to navigation. The Texas court states that he was not engaged in work upon or connected with the barge, and could not be considered a seaman. While he was at work on the submarine timbers, his air supply was in some way cut off and he was suffocated. Though the death occurred through a maritime tort, yet the work of this diver was not so directly connected with navigation and commerce as to fall exclusively within maritime jurisdiction; and since the state statute of Texas prescribed the only remedy that could be had, it was held that its exclusive feature superseded the right to resort to admiralty which would otherwise have existed.

An instructive contrast with this decision is furnished by a case possessing certain distinguishing features, which had [fol. 137] previously arisen in New York—De Gastano v. Merritt & Chapman Dock & Wrecking Co., 196 N. Y. S. 573. In this case the diver was one of the regular crew of a vessel engaged at the time in laying a submarine cable, and was at work on the sea floor in the very service in which the vessel was being employed. He was therefore a seaman attached to the vessel and engaged at work intimately connected with its operation. Upon that ground the New York court held that the State Compensation Law was not applicable.

The law as proclaimed in the cases cited has been applied, with regard paid to its distinctions, by the appellate courts of this state in several cases which have engaged their attention. The first case decided by our supreme court after the decision in the Jensen case was Tallac Co. v. Pillsbury, 176 Cal. 236, where a mate, hired in San Francisco for a voyage to British Columbia, was injured on board the plaintiff's steamer while loading cargo in the port of New Westminister. Upon the return of the ship to San Francisco, the Industrial Accident Commission, on application of the injured seaman, made an award in his favor under the Workmen's Compensation Act; but upon

certiorari the award was annulled upon the ground that the Commission was wholly without jurisdiction.

In Sudden & Christensen v. Industrial Acc. Com., 182 Cal. 437, the court was called upon to review an award of death benefits to the dependants of a stevedore, killed while working on the deck of a lumber vessel discharging cargo at her dock. Here again the court, following the Jensen case, declared that the award of the Commission was an invasion of the exclusive jurisdiction of admiralty.

In Alaska Packers Assn. v. Industrial Acc. Com., 191 Cal. 763, a seaman was injured while working as a rigger on board a bark at her dock in the Oakland estuary, where she was being made ready for her next voyage. Quoting pertinent portions of the opinions in State Ind. Com. v. [fol. 138] Nordenholt Corp., 259 U. S. 263, and Great Lakes Dredge & Dock Co. v. Kierejewski, 261 U. S. 479, the court denied jurisdiction to the Industrial Accident Commission and annulled the award.

A like conclusion was reached in Zurick General Accident & L. E. Co. v. Industrial Acc. Com., 191 Cal. 770, which in its circumstances is not dissimilar to the case at bar. There an award had been made to the dependants of a deckhand employed on a dredger at Newport harbor, who was drowned in attempting to go ashore in a motor launch upon an errand connected with his employment. After a survey of the authorities, the court held that the employment was so directly connected with navigation and commerce as to require the application of the rule of the Jensen case in the interest of uniformity; and again the award of the Commission was annulled.

James Rolph Co. v. Industrial Acc. Com., 192 Cal. 398 (affirmed 264 U. S. 219), is another case in which the death of a stevedore occurred by reason of injuries received while working on a vessel discharging cargo at her dock. The court emphasized the distinction made in State Ind. Com. v. Nordenholt Corporation between work aboard ship and work ashore; and held that the Commission acted in excess of its jurisdiction, and hence its award could not be sustained.

In Beyerle v. Industrial Acc. Com., 48 Cal. App. Dec. 439, 241 Pac. 894, injury was suffered in the waters of San Diego Bay by an employee of a lumber company, whose employment required him to aid not only in the operation

of a motor boat used in towing, but also in work on rafts of logs lying at anchor. In this case the Industrial Accident Commission had denied compensation; and upon certiorari the order was affirmed upon the ground that the injury having occurred in navigable waters and in a maritime employment, the case was within the exclusive jurisdiction of admiralty.

Thus whenever a case has been presented in which injury [fol. 139] has been accidentally suffered in navigable waters or on board a completed ship by one engaged in maritime employment directly affecting navigation or commerce, our appellate courts have consistently maintained the exclusiveness of the admiralty jurisdiction. On the other hand, certain cases have arisen in which the circumstances have been such as to bring the cases within an exception to the general rule. In Los Angeles Shipbuilding & Drydock Co. v. Industrial Acc. Com., 57 Cal. App. 372, 241 Pac. 894, a marine machinist was injured while installing machinery in a vessel which had been launched, but was still under construction. The vessel being uncompleted, the employment was held to be of a non-maritime character, as in Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469; and the injury was therefore adjudged compensable under the state law.

In City of Oakland v. Industrial Acc. Com. 198 Cal. 273, a civil service employee of the municipality was serving as a deck hand on a scow used as a tender to a municipal dredger operated by the city in deepening the channel of the Oakland estuary. The scow was tied to the wharf at the time, waiting to be towed to some point in the channel; and the employee was injured while cutting wood for a boiler on board. The supreme court held that there was nothing in the facts of this case indicating that either the general employment in the civil service, or the activities of the employee at the time of the injury had any direct relation to navigation or commerce; and hence the matter was one of more local concern, wherein the maritime rules might properly yield to state regulations. The award of the Commission was therefore affirmed.

The latest case from our supreme court is Alaska Packers Assn. v. Industrial Acc. Com., 73 Cal. Dec. 330, 253 Pac. 926. In this case, an employee named Peterson, who had entered into a contract in San Francisco to render services as a

seaman and fisherman for the fishing season in Alaska, [fol. 140] was injured at the close of the season in work incident to the storage of fishing boats for the winter. He and a fellow employee had temporarily left their boat at anchor near the beach; and on returning found that because of the low tide the boat had become stranded in the mud and sand, though for the most part still in water. Standing on the bank, Peterson attempted with the aid of others to lift the boat sufficiently to float it, but in doing so suffered injury to his back and hip. The Industrial Accident Commission awarded compensation; and in considering the question of jurisdiction the supreme court, while pronouncing the contract to be of a maritime nature, laid stress on the fact that the injury occurred while Peterson was standing on the beach; and took the view that his activity in pushing and lifting the boat was essentially land-labor and not maritime in character. The case was therefore placed in the category of those involving injuries sustained on land by dock and port employees working under maritime contracts, which may be governed by the local law without prejudice to the characteristic feature of admiralty.

It can hardly be said that the body of judicial decisions is sufficiently diversified as yet to permit any broad generalization definitive of the class called cases of local concern. The law of the subject is still in a formative stage, and intervening between the dominant maritime class and the territorial class is a twilight zone which will doubtless narrow, little by little, as the marginal lines become more sharply delimited under the process of judicial paring. At present we may, however, make certain general deductions from the decisions of authoritative rank.

When a maritime injury occurs in navigable waters to one engaged in distinctive maritime work under a contract directly affecting navigation or commerce, the necessity of preserving the freedom of interstate and international navigation and commerce commits the case to the exclusive ju- [fol. 141] risdiction of admiralty. Under such circumstances the maritime jurisdiction is established by the conjunction of the locus of the accident and the nature of the employment. When, however, such concurence is wanting, the rule of uniformity may be relaxed, where the circumstances permit relief to be advantageously afforded by the local law

without conflict with the tribunals of the sea. And particularly is this course allowable when the work, though performed on navigable waters, is under a non-maritime contract; and likewise when, though the employment is maritime, the locus of the accident is so related to the territorial jurisdiction that antagonism will not be bred by according paramountcy to the local law rather than to the general maritime law as administered in admiralty.

In the present case there does exist the concurrence of maritime locus and maritime work under a maritime contract, which, in the interests of uniformity, renders the State Compensation Act inoperative. Brooke, under his employment as a seaman attached to navigable vessels, lost his life in navigable waters while engaged in an effort to save one of his employer's vessels from a peril of the sea. His contract of employment as a mariner contemplated submission to the dominant federal rule in all such perilous undertakings; and whenever under such circumstances casualties of that character occur, the attendant rights and liabilities are to be determined by the same general law, whether the place of the fatality is in the Bay of Santa Monica, or of San Francisco, or New York, or in the Gulf of Mexico, or in mid ocean. The controlling principle is aptly illustrated in the rather unique case of Reinhardt v. Newport Flying Service Corp., 232 N. Y. 116, 133 N. E. 371. There a hydro-æroplane, while moored in the navigable waters of Grauvesend Bay, dragged its anchor and was drifting toward the beach in danger of being wrecked. The plaintiff, who was employed in the care and management of the craft, waded into the water to turn the plane about, [fol. 142] and was injured by the propeller. Compensation was awarded him by the New York Industrial Accident Commission; but the Court of Appeals, holding both the employment and the injury to be maritime, asserted the supremacy of the general maritime law, and, reversing the award, dismissed the claim.

A similar disposition must be made of the case at bar, which possessing no affinity with cases of mere local concern, must take its place in the realm over which admiralty reigns supreme.

The award is annulled.

Johnson, J., pro Tem.

We concur: Works, P. J. Thompson, J.

[fol. 143] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING PETITION FOR HEARING—Filed July 25, 1927

Respondent's application to have the above entitled matter heard and determined by this court after judgment in the District Court of Appeal of the Second Appellate District, Division Two, is granted and said matter transferred to this court for hearing and decision.

Dated July 25, 1927.

Waste, C. J., Seawell, J., Shenk, J., Curtis, J., Langdon, J., Preston, J.

[File endorsement omitted.]

[fols. 144-149] IN SUPREME COURT OF CALIFORNIA

ORDER SETTING CAUSE—Aug. 11, 1927

By the COURT:

The following cases are hereby placed upon the calendar of the Supreme Court for hearing at Los Angeles, California, Sun Finance Building, on September 12, 13 and 14th, 1927:

* * * * * * *

Wednesday, September 14, 1927—10:00 A. M., L. A. 9991, London Guarantee & Accident Co. vs. I. A. C.

* * * * * * *

Seawell, Acting C. J.

Dated August 11, 1927.

[fol. 150] IN SUPREME COURT OF CALIFORNIA, IN BANK

L. A. No. 9991

LONDON GUARANTEE & ACC. CO.

vs.

IND. ACC. COMM.

ORDER OF SUBMISSION—Filed Dec. 15, 1927

By the COURT:

The time for filing briefs pursuant to an order entered herein September 14, 1927, having expired, matter (review) submitted as of this date.

Waste, Chief Justice.

Dated December 15, 1927.

[File endorsement omitted.]

[fol. 151] IN SUPREME COURT OF CALIFORNIA

L. A. 9991

LONDON GUAR. & ACC. CO.

vs.

IND. ACC. COMM.

JUDGMENT—March 27, 1928

Award of the Industrial Accident Commission is affirmed.

Langdon, J.

We concur: Shenk, J., Waste, C. J., Curtis, J., Seawell, J., Richards, J., Preston, J.

[fol. 152] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA, BANK

L. A. 9991

[Title omitted]

OPINION—Filed March 27, 1928

This is a proceeding in certiorari to review an award of the Industrial Accident Commission for payment of $150 for the burial expenses of John James Uttley Brooke, an unmarried minor nineteen years of age, who was drowned in Santa Monica Bay on April 8, 1926, while in the service of the Morris Pleasure Fishing, Inc. The petitioner was the insurance carrier of the employer; and the question presented is whether the case must be relegated to the exclusive cognizance of a court of admiralty, or may be brought within the purview of the Workmen's Compensation Act of this state.

On a petition to the Industrial Accident Commission filed by the mother and the stepfather of the deceased, hearings were had and findings made that Brooke, while employed as [fol. 153] a spare skipper, met his death by drowning in an accident occurring in the course of, and arising out of, his employment; that he was not at the time engaged in maritime employment; and that both he and his employer were subject to the provisions of the Workmen's Compensation Act. The Commission further found that neither the mother nor the stepfather of the deceased was dependent upon him; and, accordingly, the award was limited to the reasonable expenses of burial, which were fixed at $150.

The evidence taken at the hearing showed the facts to be as follows: The Morris Pleasure Fishing, Inc., is a corporation which carries on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels for the accommodation of the public seeking recreation in deep-sea fishing. In the fishing seasons its practice has been to have excursions daily from Santa Monica Bay to the ocean fishing grounds, a distance of three to five miles, with fixed charges both for half-day and full-day trips. For use in this business the company has several

vessels, ranging from four to fourteen tons registry, equipped with gas engines and capable of cruising a distance of 500 miles. The business has been confined entirely to the maintenance of these pleasure-fishing vessels and the transportation of patrons to and fro by water, except that excursionists have also been supplied with bait. As one of the necessary incidents of its business the company employs seamen to navigate its vessels; and before and at the time of the accident which occasioned Brooke's death, he was in the company's employ as an apprentice navigator and seaman. In that capacity he made daily trips as required with the Company's vessels, and at times substituted as "spare skipper" for one of the regular skippers. On April 8, 1926, one of the company's fishing vessels called "W. K.," of about seven tons registry, was moored, with no one aboard, in Santa Monica Bay about three-quarters of a mile to a mile from the pier. A storm [fol. 154] having arisen, the vessel broke from her moorings early in the afternoon, and began to drift toward the shore. In an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employe, named Gregory, put off from the pier with the purpose in mind of boarding the "W. K." and returning her to her anchorage. But as they neared the drifting vessel, their boat was capsized by a heavy wave and all three were drowned.

The petitioner here contends that Brooke's employer was engaged exclusively in a maritime industry; that its contract with Brooke was for maritime services alone; and that Brooke's life having been lost in such service in navigable waters of the United States, the rights and liabilities of the parties are to be determined by the general maritime law, and hence there was no jurisdiction in the Industrial Accident Commission to conduct any hearing or to grant any award.

The Commission does not dispute the fact that the casualty occurred in navigable waters; but it contends that as the business of the employer was a pleasure business, there was not a maritime contract touching rights and duties pertaining to commerce or navigation in a way to invoke the rules of maritime law and exclude the case from the juridical competency of the state tribunals, and that the matter

is one merely of local concern. It is asserted that the application of the state compensation act and the assertion of jurisdiction by the local courts in the instant case will not work any prejudice to the characteristic features of the general maritime law or interfere with the proper harmony or uniformity of that law in its international or interstate relations.

The question involved here was carefully analyzed in the case of State ex rel Cleveland Engineering Construction Co. vs. Duffy, et al., 148 N. E. 572, where the court says: "Un- [fol. 155] der these contracts of employment do the rights and liabilities have a direct relation to navigation? And would the application of the local law (Compensation Act) materially affect any of the rules of the sea and thereby the uniformity which is essential to maritime law? • • • A careful examination of the range of work which the employees of plaintiff performed would seem to disclose nothing that had a direct bearing upon the maritime service, navigation, or maritime commerce, either interstate or foreign."

It is pointed out in the case last cited, that there are two parallel lines of decisions, one line having its basis in the decision of the United States Supreme Court in the Jensen case (Southern Pacific Co. v. Jensen, 244 U. S. 205), the other having its basis in the Rohde case (Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469). The court further says: "A large number of cases may be cited which adopt the principle announced in Southern Pacific Co. v. Jensen, supra, but all that class of cases is founded upon some conflict of the law of the sea or maritime law with the local statute. These cases often relate to stevedores or longshoremen unloading the cargo of vessels or artisans working upon a vessel engaged in interstate or foreign trade, in fact, all of them have some direct bearing upon maritime law. On the other hand, the courts distinctly recognize a group of cases, of which Grand Smith-Porter Ship Co. v. Rohde, supra, is the leading case, all founded upon the principle that their provisions were found not to be in conflict with any essential feature of the general maritime law. Industrial Commission of N. Y. v. Nordenholt Corp. 259 U. S. 263, 42 S. Ct. 473, 66 L. Ed. 933, 25 A. L. R. 1013, is of

this class; also Western Fuel Co. v. Gascia, Adm'r, 257 U. S. 233, 42 S. Ct. 89, 66 L. Ed. 210."

It is true the decisions have made it rather difficult to ascertain the exact dividing line between casualties which are strictly maritime and those which are more properly designated as marine or non-maritime. It would seem that [fols. 156-170] the rigor- Jensen case has been modified by subsequent cases and that the trend of the more recent cases is to permit the state law to operate where the employment has no direct relation to interstate or foreign commerce or navigation, notwithstanding the fact that the casualty occurs in navigable waters.

The application of the compensation act in this case is not in conflict with the provisions of any Federal statute. The action was not brought to recover damages for a tort, but solely for compensation under our statute. We think the case is similar in principle to the cases of City of Oakland v. Industrial Accident Commission, 198 Cal. 273 and Alaska Packers v. Industrial Accident Commission, 73 Cal. Dec. 330. It is, of course, the policy of this court to give force and effect to the Statutes of this state unless they are clearly unconstitutional.

The award of the Industrial Accident Commission is affirmed.

Langdon, J.

We concur: Shenk, J., Waste, C. J., Curtis, J., Seawell, J., Richards, J., Preston, J.

[fol. 171] In Supreme Court of California, in Bank

[Title omitted]

Order Denying Rehearing—April 26, 1928

By the Court:

The petition for a rehearing of this matter (review) is denied. All present concur.

Waste, Chief Justice.

[fol. 172] In Supreme Court of California, Bank

Los Angeles No. 9991

London Guarantee and Accident Company, Ltd.
Petitioner,

vs.

The Industrial Accident Commission of the State of California, Sarah Jane Brooke, and John Arthur Brooke, Respondents

On Review from the Industrial Accident Commission of the State of California

Judgment—March 27, 1928

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the award of the Industrial Accident Commission of the State of California in the above-entitled cause be, and the same is hereby, affirmed.

Certificate to foregoing paper omitted in printing.

[fol. 173] In Supreme Court of California

[Title omitted]

Petition for Order Allowing Appeal and Writ Thereon, Assignment of Errors, and Prayer for Reversal

Petition for Order Allowing Appeal and Writ Thereon

Petitioner, London Guarantee and Accident Company, Ltd., a corporation duly organized and existing under and by virtue of the Laws of Great Britain with its principal place of business in the United States in the City, County and State of New York and authorized to do and doing a

general insurance business in the State of California with a Branch Office in the City of Los Angeles, State of California, considering itself aggrieved by the decision of the Supreme Court of the State of California in the above entitled cause rendered and decided March 27, 1928 which said decision became final for the purposes of a review thereof by the Supreme Court of the United States by the denial on April 26, 1928 by the Supreme Court of the State of California of the petition for a re-hearing (review) of the said cause theretofore duly and timely filed in said Court by the appellant herein, hereby prays that an order allowing appeal be made and that a writ thereon issue herein directed to the Supreme Court of the State of California, and for an order fixing the amount of the bond thereon and directing that the bond when approved and duly filed shall operate as a supersedeas.

[fol. 174] Assignment of Errors

And the said London Guarantee and Accident Company, Ltd., assigns the following errors in the record and proceedings in the said cause:

1. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke was not in the employ of the Morris Pleasure Fishing, Inc. under and pursuant to a maritime contract, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States).

2. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke, while in the service of the Morris Pleasure Fishing, Inc., was not engaged in a maritime employment, on April 8, 1926, at the time of his death by accidental drowning in Santa Monical Bay, California (public navigable waters of the United States).

3. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke, while in the service of the Morris Pleasure Fishing, Inc., was not engaged in performing a maritime service under

and pursuant to a maritime contract, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States).

4. The Supreme Court of the State of California erred in finding and holding that the injury or accident suffered by John James Uttley Brooke, on April 8, 1926, while in the employ of the Morris Pleasure Fishing, Inc., to wit, his death by drowning in the waters of Santa Monica Bay, California (public navigable waters of the United States), was not a maritime injury or accident.

5. The Supreme Court of the State of California erred in finding and holding that the business conducted by the Morris Pleasure Fishing, Inc. and in relation to or in con-
[fol. 175] nection with which John James Uttley Brooke was employed, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States), was not a maritime business or industry.

6. The Supreme Court of the State of California erred in finding and holding that a statute of the State of California, to wit, Workmen's Compensation, Insurance and Safety Act of 1917 (Chap. 586 Statutes 1917), as amended, the provisions thereof and the remedies thereunder were to be applied by reason of the death, on April 8, 1926, by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) of John James Uttley Brooke, while in the service of the Morris Pleasure Fishing, Inc.

7. The Supreme Court of the State of California erred in finding and holding that all matters arising out of or in relation to the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., were not exclusively within the admiralty and maritime jurisdiction of the Courts of the United States pursuant to Section 2 of Article III of the Constitution of the United States of America.

8. The Supreme Court of the State of California erred in finding and holding that the application of a statute of the State of California, to wit, Workmen's Compensation, Insurance and Safety Act of 1917 (Chap. 586 Statutes 1917), as amended, the provisions thereof and the remedies thereunder, to the matters arising out of or in relation to the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., did not effect a result contrary to or in violation of the provisions of Section 2 of Article IIII of the Constitution of the United States of America.

[fol. 176] 9. The Supreme Court of the State of California erred in finding and holding that the Industrial Accident Commission of the State of California had jurisdiction to make an award in relation to or by reason of the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., such finding and holding being in contravention of Section 2 of Article III of the Constitution of the United States of America.

10. The Supreme Court of the State of California erred in finding and holding that the award made by the Industrial Accident Commission of the State of California in relation to or by reason of the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., should be affirmed, and further erred in affirming the same, such finding and holding and such affirmance being in contravention of Section 2 of Article III of the Constitution of the United States of America.

Prayer for Reversal

For which errors the appellant London Guarantee and Accident Company, Ltd., prays that the said judgment or

decision of the Supreme Court of the State of California dated March 27, 1928 in the above entitled cause as rendered final by the denial on April 26, 1928 by the Supreme Court of the State of California of the petition for a rehearing (review) of the said cause theretofore duly and timely filed in said Court by the appellant, be reversed and a judgment or decision rendered in favor of the appellant and for costs.

Leo C. Weiler, Counsel for Appellant. Office & P. O. address: 175 Fifth Avenue, Borough of Manhattan, New York, New York.

[fols. 177-180] In Supreme Court of California

Order Allowing Appeal

Upon considering the foregoing petition for an Order Allowing Appeal and Writ Thereon, Assignment of Errors and Prayer for Reversal, the Order Allowing Appeal therein prayed for is hereby granted and made, the Writ thereon is hereby allowed, the bond is hereby fixed in the sum of One thousand five hundred ($1,500) Dollars and it is ordered that the bond when approved and duly filed shall operate as a supersedeas.

Dated the 7th day of June, 1928.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 181-183½] Citation, in usual form, showing service on T. C. Faulkner, filed June 16, 1928, omitted in printing.

[fol. 184] In Supreme Court of California

[Title omitted]

Stipulation in Lieu of Præcipe and Counter Præcipe

The parties to this appeal by their respective counsel, in lieu of præcipe and counter præcipe, do hereby stipulate as follows:

I. The Clerk of the Supreme Court of the State of California in obedience to the Writ herein, issued upon Order Allowing Appeal, is respectfully requested to transmit to the Supreme Court of the United States as and for the transcript of the record of this cause, a copy of the following indicated portions of the record:

1. Petiton for writ of review verified December 4, 1926, filed in the District Court of Appeal of the State of California, Second Appellate District, Division Two, together with the exhibits there in referred to and thereto annexed, to wit:

Exhibit A—Application for adjustment of claim.
Exhibit B—Order joining parties defendant.
Exhibit C—Answer of defendants.
Exhibit D—Findings and Award.
Exhibit E—Petition of defendants for rehearing.
Exhibit F—Order denying petition for rehearing.

2. Petitioner's memorandum of points and authorities in support of its application for writ of review filed in the District Court of Appeal of the State of California, Second Appellate District, Division Two.

3. Minute Order of the District Court of Appeal of the State of California, Second Appellate District, Division Two dated January 7, 1927 and signed by the Honorable Lewis R. Works, Presiding Justice.

4. Writ of review (certiorari) dated January 8, 1927 and issued out of the District Court of Appeal, Second Appellate District of the State of California, Division Two, directed to the Industrial Accident Commission of the State [fol. 185] of California (returnable January 31, 1927), together with the proof of the service of said writ upon said Industrial Accident Commission of the State of California.

5. Certification of F. B. Lord, Secretary of the Industrial Accident Commission of the State of California, dated January 26, 1927, (certifying the proceedings before the Industrial Accident Commission of the State of California).

6. Application for adjustment of claim dated April 24, 1926 (being a part of the record of proceedings had before

the Industrial Accident Commission of the State of California).

7. Order joining parties defendant, dated May 28, 1926 (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

8. Answer of defendants Morris Pleasure Fishing, Inc. and London Guarantee and Accident Company, Ltd. (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

9. Report of hearing on the 10th day of June, 1926 at 10:30 o'clock A. M. at the Chamber of Commerce Building, Long Beach, California, before Letus N. Crowell, Referee (L. A. claim #6044), (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

10. Report of further hearing on September 13, 1926 at 3:30 o'clock P. M. at 911 Sun Finance Building, Los Angeles, California, before Letus N. Crowell, Referee (L. A. claim #6044), (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

11. Certification of F. B. Lord, Secretary of the Industrial Accident Commission of the State of California dated January 27, 1927 (referring to testimony in the case entitled Mrs. Jennie Gregory et als. vs. Captain Morris Fishing Co. and London Guarantee and Accident Company, L. A. #5986 as had on the 13th day of September 1926), (by stipulation a part of the record in this cause before the Industrial Accident Commission of the State of California).

12. Report of hearing on June 10, 1926 at 10:30 o'clock A. M. at the Chamber of Commerce Building, Long Beach, California, before Letus N. Crowell, Referee, in the case of Mrs. Jennie Gregory et als. vs. Morris Pleasure Fishing, Inc. and London Guarantee and Accident Company, Ltd. (Claim L. A. #5986), at which hearing there was taken the testimony of Jennie Gregory and Josephine Morris, (having been returned by the Industrial Accident Commission of the State of California as a part of the record of proceedings in this cause).

13. Report of further hearing on September 13, 1926 at 3:30 o'clock P. M. at 911 Sun Finance Building, Los Angeles, California, before Letus N. Crowell, Referee, in the case of Mrs. Jennie Gregory et als. vs. Morris Pleasure Fishing Co. Inc. and London Guarantee and Accident Company, Ltd., (claim L. A. #5986), (by stipulation a part of the record in this cause), (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

14. Findings and Award dated October 6, 1926 (being a a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

[fol. 186] 15. Petition of defendants for rehearing (being part of the record of proceedings had before the Industrial Accident Commission of the State of Califronia).

16. Order denying petition for rehearing, dated November 5, 1926 (being a part of the record of proceedings had before the Industrial Accident Commission of the State of California).

17. Petition for hearing in the Supreme Court of the State of California after final decision by the District Court of Appeal, Second Appellate District, Division Two, together with the exhibit therein referred to and thereto annexed, to wit: The opinion written in the District Court of Appeal, Second Appellate District, Division Two (Civ. 5532) of Johnson, J. (pro tem) concurred in by Works, P. J. and Thompson, J.

18. Order in the Supreme Court of the State of California dated July 25, 1927 (L. A. 9991-2 Civ. 5532) transferring matter to said Court for hearing and decision.

19. Order in Supreme Court of the State of California dated August 11, 1927 (L. A. 9991) setting matter for hearing.

20. In the Supreme Court of the State of California—Citation of additional authorities submitted by Respondent, Industrial Accident Commission.

21. In the Supreme Court of the State of California—Reply brief on behalf of London Guarantee and Accident Company, Ltd.

22. In the Supreme Court of the State of California (in Bank)—Order of Chief Justice dated December 15, 1927 submitting matter as of that date.

23. In the Supreme Court of the State of California—Order dated March 27, 1928 affirming award of the Industrial Accident Commission of the State of California.

24. In the Supreme Court of the State of California—Opinion filed March 27, 1928 (L. A. 9991).

25. In the Supreme Court of the State of California—Petition for rehearing, dated April 14, 1928.

26. In the Supreme Court of the State of California—Answer to Petition for rehearing.

27. In the Supreme Court of the State of California—Order dated April 26, 1928 denying petition for a rehearing (review).

28. In the Supreme Court of the State of California—Remittitur to Industrial Accident Commission of the State of California.

II. In addition thereto, the Clerk of the Supreme Court of the State of California will transmit to the Supreme Court of the United States and as a part of the return, the following:

1. A copy of the petition for order allowing appeal and writ thereon, assignment of errors and prayer for reversal, together with the order at the foot thereof date June 7, 1928 made by the Honorable William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 187] 2. A copy of the bond on appeal, dated June 15, 1928, approved by the Honorable William H. Waste, Chief Justice of the Supreme Court of the State of California.

3. The original citation dated June 15, 1928 signed by the Honorable William H. Waste, Chief Justice of the

Supreme Court of the State of California and directed to the Industrial Accident Commission of the State of California, Sarah Jane Brooke and John Arthur Brooke, bearing at the foot thereof an admission of the service thereof on the 15th day of June 1928.

4. The original writ issued upon order allowing appeal, dated June 15, 1928, signed and sealed by the Clerk of the District Court of the United States, Northern District of California, allowed at the foot thereof by the Honorable William H. Waste, Chief Justice of the Supreme Court of the State of California and directed to the Supreme Court of the State of California.

5. This stipulation in lieu of præcipe and counter præcipe.

6. A certificate under his hand and the seal of the Supreme Court of the State of California, properly certifying and authenticating all of the foregoing, pursuant to statute and rule.

III. The transcript, return and record so prepared and certified, it is agreed will contain in itself all the papers, exhibits, depositions and other proceedings in this cause which are necessary to the hearing of this appeal by the Supreme Court of the United States.

Items 2, 12 and 17, as hereinabove set forth in paragraph I, are included in this Return at the request of Counsel for Appellees herein and Respondents before the Supreme Court of the State of California.

All other portions of the record, as stipulated herein above, are included in this Return at the request of Counsel for Appellant herein, Petitioner before the Supreme Court of the State of California.

Dated, August 22nd, 1928.

Leo C. Weiler, Counsel for Appellant. Office & P. O. address: 175 Fifth Avenue, New York, New York.
G. C. Faulkner, Counsel for Appellees. Office & P. O. address: State Building, Civic Center, San Francisco, California.

[fols. 188-193] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 194-201] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME—Filed Oct. 3, 1928

On consideration of the Petition of counsel for the appellant herein, hereto annexed, and good cause therefor having appeared,

It is now here ordered, that the time of the appellant to docket the case and file the record thereof with the Clerk of this Court be further enlarged, and the time of the appellant to so docket this case and file the record thereof be and the same hereby is further extended to and including October 15th, 1928.

Dated September 5th, 1928.

Louis D. Brandeis, Associate Justice of the Supreme Court of the United States.

[fol. 202] [File endorsement omitted.]

[fol. 203] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1928

No. 491

STATEMENTS OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Oct. 8, 1928

Affidavit of Service of Appellant's Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed

STATE OF NEW YORK,
County of New York, ss:

Leo C. Weiler, being duly sworn, says:

I am the counsel for appellant herein.

That on the 5th day of October, 1928, I served upon G. C. Faulkner, Esq., the counsel for the appellees herein, copies of the annexed Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed.

That said service of said copies was made as follows:

At Madison Square Station of the United States Post Office, 23rd Street in the Borough of Manhattan, City and State of New York, I duly mailed a copy thereof, securely enclosed in a fully post-paid wrapper, directed to the said G. C. Faulkner, Esq., at his office and post office address, State Building, Civic Center, San Francisco, California, and dispatched to him by ordinary mail.

[fol. 204] At Madison Square Station of the United States Post Office, 23rd Street in the Borough of Manhattan, City and State of New York, I duly mailed a copy thereof, securely enclosed in a fully post-paid wrapper, directed to the said G. C. Faulkner, Esq., at his office and post office address, State Building, Civic Center, San Francisco, California, and dispatched to him by air mail.

At Madison Square Station of the United States Post Office, 23rd Street, in the Borough of Manhattan, City and State of New York, I duly mailed a copy thereof, securely enclosed in a fully post-paid wrapper, directed to the said G. C. Faulkner, Esq., at his office and post office address, State Building, Civic Center, San Francisco, California, and dispatched to him by United States Registered Mail, receiving therefor the official receipt No. 330,967.

I know the said G. C. Faulkner, Esq., the person so served as aforesaid, to be the counsel for the appellees herein, and the said address, to which the same were respectively dispatched as aforesaid, to be the office and post office address of said counsel for appellees.

Leo C. Weiler.

Sworn to before me this 5th day of October, 1928. Florence Epstein. Florence Epstein, Notary Public, Kings County. Kings Co. Clerk's No. 126, Reg. No. 9028. N. Y. Co. Clerk's No. 71, Reg. No. 9086. My Commission Expires March 30, 1929. Certificate filed in N. Y. Co. (Seal Florence Epstein, Notary Public, Kings County.)

[fol. 205] Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed

Comes now the Appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke was not in the employ of the Morris Pleasure Fishing, Inc. under and pursuant to a maritime contract, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States).

Point 2. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke, while in the service of the Morris Pleasure Fishing, Inc., was not engaged in a maritime employment, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States).

Point 3. The Supreme Court of the State of California erred in finding and holding that John James Uttley Brooke, while in the service of the Morris Pleasure Fishing, Inc., was not engaged in performing a maritime service under and pursuant to a maritime contract, on April 8, 1926, at the time of his death by accidental drowning in [fol. 206] Santa Monica Bay, California (public navigable waters of the United States).

Point 4. The Supreme Court of the State of California erred in finding and holding that the injury or accident suffered by John James Uttley Brooke, on April 8, 1926, while in the employ of the Morris Pleasure Fishing, Inc., to wit, his death by drowning in the waters of Santa Monica Bay, California (public navigable waters of the United States), was not a maritime injury or accident.

Point 5. The Supreme Court of the State of California erred in finding and holding that the business conducted by the Morris Pleasure Fishing, Inc., and in relation to or in connection with which John James Uttley Brooke was employed, on April 8, 1926, at the time of his death by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States), was not a maritime business or industry.

Point 6. The Supreme Court of the State of California erred in finding and holding that a statute of the State of California, to wit, Workmen's Compensation, Insurance and Safety Act of 1917 (Chap. 586 Statutes 1917), as amended, the provisions thereof and the remedies thereunder were to be applied by reason of the death, on April 8, 1926, by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) of John James Uttley Brooke while in the service of the Morris Pleasure Fishing, Inc.

Point 7. The Supreme Court of the State of California erred in finding and holding that all matters arising out of or in relation to the death, on April 8, 1926 of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., were not exclusive within the admiralty and maritime jurisdiction of the Courts of the [fol. 207] United States pursuant to Section 2 of Article III of the Constitution of the United States of America.

Point 8. The Supreme Court of the State of California erred in finding and holding that the application of a statute of the State of California, to wit, Workmen's Compensation, Insurance and Safety Act of 1917 (Chap. 586 Statutes 1917), as amended, the provisions thereof and the remedies thereunder, to the matters arising out of or in relation to the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., did not effect a result contrary to or in violation of the provisions of Section 2 of Article III of the Constitution of the United States of America.

Point 9. The Supreme Court of the State of California erred in finding and holding that the Industrial Accidental Commission of the State of California had jurisdiction to make an award in relation to or by reason of the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris Pleasure Fishing, Inc., such finding and

holding being in contravention of Section 2 of Article III of the Constitution of the United States of America.

Point 10. The Supreme Court of the State of California erred in finding and holding that the award made by the Industrial Accident Commission of the State of California in relation to or by reason of the death, on April 8, 1926, of John James Uttley Brooke by accidental drowning in Santa Monica Bay, California (public navigable waters of the United States) and while in the service of the Morris [fol. 208] Pleasure Fishing, Inc., should be affirmed, and further erred in affirming the same, such finding and holding and such affirmance being in contravention of Section 2 of Article III of the Constitution of the United States of America.

And the Appellant further states that only the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

Title of paper	Record page
Petition for writ of review	1 to 9 inclusive
Order joining parties defendant (Exhibit B to foregoing)	12
Minute order of District Court of Appeal—January 7, 1927	31
Writ of review (certiorari)	32
Certification	33
Application for adjustment of claim	34 to 35 inclusive
Answer	36 to 37 inclusive
Report of hearing	38
Report of further hearing	39 to 59 inclusive
Certification	60
Report of hearing	61 to 72 inclusive
Report of further hearing	73 to 82 inclusive
Findings and award	83 to 84 inclusive
Petition of defendants for rehearing	85 to 90 inclusive
Order denying petition for rehearing	91
Petition for hearing in Supreme Court after final decision by District Court of Appeal	92 to 124 inclusive
Opinion in District Court of Appeal (being exhibit referred to in and attached to foregoing)	125 to 142 inclusive

Title of paper	Record page
Order in Supreme Court of California —July 25, 1927	143
Order in Supreme Court of California —August 11, 1927	144
[fols. 209 & 210] Order in Supreme Court of California—December 15, 1927	150
Minute order in Supreme Court of California—March 27, 1928	151
Opinion, Supreme Court of California filed March 27, 1928	152 to 156 inclusive
Order in Supreme Court of California denying petition for rehearing	171
Remittitur	172
Petition for order allowing appeal, assignment of errors and prayer for reversal, with order at the foot thereof dated June 7th, 1928 allowing appeal	173 to 177 inclusive
Citation with admission of service	181
Stipulation in lieu of praecipe and counter-praecipe	184 to 187 inclusive
Certification	188

Leo C. Weiler, Leo C. Weiler, Counsel for Appellant. Office & P. O. address 175 Fifth Avenue, Borough of Manhattan, New York, N. Y.

[fol. 211] [File endorsement omitted.]

Endorsed on cover: File No. 33,800. California Supreme Court. Term No. 491. London Guarantee and Accident Company, Ltd., Appellant, vs. Industrial Accident Commission of the State of California, Sarah Jane Brooke, and John Arthur Brooke. Filed October 4th, 1928. File No. 33,800.

FILED
OCT 17 1928
CHARLES ELMORE CROPL
CLER

Supreme Court of the United States

OCTOBER TERM, 1928

No. 491.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,
Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE and JOHN ARTHUR BROOKE,
Appellees.

STATEMENT OF APPELLANT UNDER RULE 12 OF THE REVISED RULES, SUBMITTED IN SUPPORT OF JURISDICTION TO REVIEW.

LEO C. WEILER,
Counsel for Appellant,
175 Fifth Avenue,
Borough of Manhattan,
New York, N. Y.

PRINTED IN THE UNITED STATES BY R. H. TYDOL, PRINTER, 206 FULTON STREET, NEW YORK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1928

No. 491.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,
Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE and JOHN ARTHUR BROOKE,
Appellees.

STATEMENT OF APPELLANT UNDER RULE 12 OF THE REVISED RULES, SUBMITTED IN SUPPORT OF JURISDICTION TO REVIEW.

(a)

The statutory provision believed to sustain the jurisdiction.

Jurisdiction is sustained in this case by the provisions of Section 237(a) of the Judicial Code as set forth in the Amendatory Act of February 13, 1925, Chap. 229, 43 Stat. 936, United States Code, Title 28, Section 344(a).

This appeal is taken from a final judgment of the Supreme Court of the State of California, the highest Court of such State in which a decision in the suit could be had. By the judgment appealed from there is drawn

into question the validity of a statute of the State of California on the ground of its being repugnant to the constitution of the United States and such judgment below was in favor of the validity of the California statute.

The State statute involved is the California Workmen's Compensation, Insurance and Safety Act of 1917 (Chapter 586, California Statutes 1917) and amendments thereto.

The constitutional provisions which are involved are those of Section 2 of Article III relating to the judicial power of the United States over all cases of admiralty and maritime jurisdiction.

The judgment appealed from was entered after the effective date of the Act of January 31, 1928 abolishing writs of error and the appeal was taken and allowed after the effective date of the Act of April 26, 1928 which amended Section 2 of the Act of January 31, 1928.

The case is thus in this Court by way of appeal rather than by writ of error.

In obedience to the directions of the amending Act, the right to come to this Court was invoked in every respect in the same manner as upon a writ of error and although the appeal was sought, allowed and perfected prior to the effective date of the new Rule 46 of the Revised Rules, it was sought, allowed and perfected in conformity with the statutes theretofore governing a writ of error and in every respect in accord with the directions of the subsequently effective Rule 46.

(b)

Date of Judgment to be reviewed and date of application for allowance of appeal.

The judgment appealed from was entered in the Supreme Court of the State of California on March 27, 1928 (R., 172). (The Record, as yet, not having been printed, all references in this statement are to the pages of the typewritten transcript of the Record as filed).

The California Supreme Court entertained an application for re-hearing but on April 26, 1928 denied such re-hearing (R., 171).

The order allowing this appeal was signed by the Chief Justice of the Supreme Court of the State of California on June 7, 1928 upon presentation of the petition, assignment of errors and prayer for reversal (R., 177).

The elapsed time between the denial of the application for a re-hearing and the allowance of the appeal was forty-two days.

The elapsed time between the entry of the judgment appealed from and the allowance of the appeal was seventy-two days.

Upon the order allowing appeal, a writ was issued out of the United States District Court, Northern District of California on June 15, 1928 (R., 182-183). The Chief Justice of the Supreme Court of the State of California, in addition to signing the order allowing appeal on June 7, 1928, also allowed the writ at the foot thereof (R., 183).

This appeal being from the judgment of a Court of the State of California, the citation was made returnable within sixty days from the date thereof and was signed by the Chief Justice of the Supreme Court of the State of California on June 15, 1928 (R., 181). At the same time the bond on appeal was approved (R., 178-179).

The citation was served upon the counsel for the Appellees on June 15, 1928 (R., 181).

On June 16, 1928 the originals of all of the papers in connection with the application for, allowance and perfection of the appeal were filed in the office of the Clerk of the Supreme Court of the State of California.

All steps in connection with the appeal were timely taken.

(c)

Nature of the case and of the rulings below.

On April 8, 1926 John James Uttley Brooke, an employee of Morris Pleasure Fishing, Inc., was drowned in the waters of Santa Monica Bay, California. His death occurred in the course of and arising out of his employment.

The question for determination will be whether the California Workmen's Compensation, Insurance and Safety Act of 1917 as amended, as it was construed and applied to the facts in this case by the Court below, contravenes Section 2 of Article III of the constitution which extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

Throughout the case the present Appellant contended that the contract of employment of the decedent Brooke, the capacity and character of his service, the nature, character and extent of his employer's business, the place and manner in which such business was carried on, the character of the accident in which Brooke met his death and the locus of the accident and death, in short, the facts and circumstances of the case, operating together, defeated all operation of the Compensation Act with respect to the matter.

It was asserted by the Appellant that the facts and circumstances were not such as to permit of any application of the local law as against the exclusiveness of the admiralty and maritime jurisdiction.

The present Appellant, an insurance carrier within the meaning of the Compensation Act, was made a party to the proceedings before the Industrial Accident Commission of the State of California (R., 12).

The answer interposed (R., 36-37) denied that the Compensation Act was applicable to the accident in question, alleged that Brooke at the time of his death was

subject to the admiralty or maritime law and not to the State Compensation Act, alleged that the Industrial Accident Commission had no jurisdiction in the matter by reason of the maritime employment and denied any and all liability in the matter under the Compensation Act.

Hearings were had (R., 38-59) (R., 60-82). The Industrial Accident Commission asserted and assumed jurisdiction and made an award under the provisions of the Compensation Act (R., 83-84).

The present Appellant filed its petition for a rehearing before the Industrial Accident Commission (R., 85-90). In such application the jurisdiction of the Commission was again challenged. It was again asserted that the Compensation Act had no application to the facts and circumstances of the case and that the matter lay exclusively within the admiralty and maritime jurisdiction.

The Industrial Accident Commission denied the petition for re-hearing (R., 91). Whereupon the present Appellant applied to the District Court of Appeal of the State of California, Second Appellate District, Division Two, for a writ of review (R., 1-9). In such petition the jurisdiction of the Industrial Accident Commission to make an award under the Compensation Act was again challenged and the admiralty and maritime jurisdiction asserted (R., 5-6).

The District Court of Appeal granted the writ of review (R., 32) and thereafter on May 26, 1927 in a long opinion sustained the contentions of the present Appellant that the Industrial Accident Commission was without jurisdiction to render an award in this case under the Compensation Act (R., 125-142).

The present Appellees thereupon petitioned the Supreme Court of the State of California for a hearing of the matter (R., 92-124). It was there asserted by the present Appellees that the Compensation Act was applicable to the facts and circumstances of the case. The

Supreme Court of the State of California granted the application for a hearing (R., 143), the matter was submitted to it for consideration (R., 150), and on March 27, 1928 the Supreme Court of the State of California affirmed the award (R., 151, 172). The opinion written in the California Supreme Court (R., 152-156) shows that the jurisdiction which the Industrial Accident Commission asserted and the award which it made under the Compensation Act were sustained against the present Appellant's claim that sole power in relation to the case lay exclusively within the admiralty and maritime jurisdiction.

The California Supreme Court determined and decided that the Compensation Act applied to the facts in this case and such determination was made in disregard of the claim that such construction and application of the statute would contravene the constitutional provision above referred to.

The claim of Appellant with respect to the exclusiveness and sole application of the admiralty jurisdiction was re-asserted upon the application to the California Supreme Court for a re-hearing (R., 157-170).

The Federal or constitutional question was thus presented and litigated below, from the beginning to the end.

The Appellant's claims raising the jurisdictional question were again appropriately asserted in the assignment of errors (R., 174-176).

(d)

Cases believed to sustain the jurisdiction.

The Compensation Act is not claimed to be invalid *in toto* and for every purpose. Its invalidity is claimed only as construed by the Supreme Court of the State of California and applied by it to the state of facts in this case. Such construction and application in favor of

the statute and against the assertion from the outset of the exclusiveness of the admiralty and maritime jurisdiction render the lower Court's decision reviewable in this Court as of right. Until quite recently such review was by writ of error; now it is by way of appeal, if not precisely in the manner and form herein taken, at least substantially so.

Eureka Pipe Line Co. vs. *Hallanan*, 257 U. S. 265, 270-271.

United Fuel Gas Co. vs. *Hallanan*, 257 U. S. 277, 280.

Dahnke-Walker Milling Co. vs. *Bondurant*, 257 U. S. 282, 287-290.

Ward & Gow vs. *Krinsky*, 259 U. S. 503, 510.

Cudahy Packing Company vs. *Parramore*, 263 U. S. 418, 422.

Fiske vs. *Kansas*, 274 U. S. 380, 385.

T. Smith & Son, Inc. vs. *Taylor*, U. S. Supreme Court, October Term 1927, No. 186; Decided February 20, 1928.

Bountiful Brick Co. vs. *Giles*, U. S. Supreme Court, October Term 1927, No. 193; Decided February 20, 1928.

Conclusion.

This appeal, it is urged, is properly before the Court as of right under Section 237(a) of the Judicial Code.

Respectfully submitted,

LEO C. WEILER,
Counsel for Appellant.

FILED
FEB 24 1920

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 491.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,

Appellant,

—against—

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE and JOHN ARTHUR BROOKE,

Appellees.

BRIEF OF APPELLANT.

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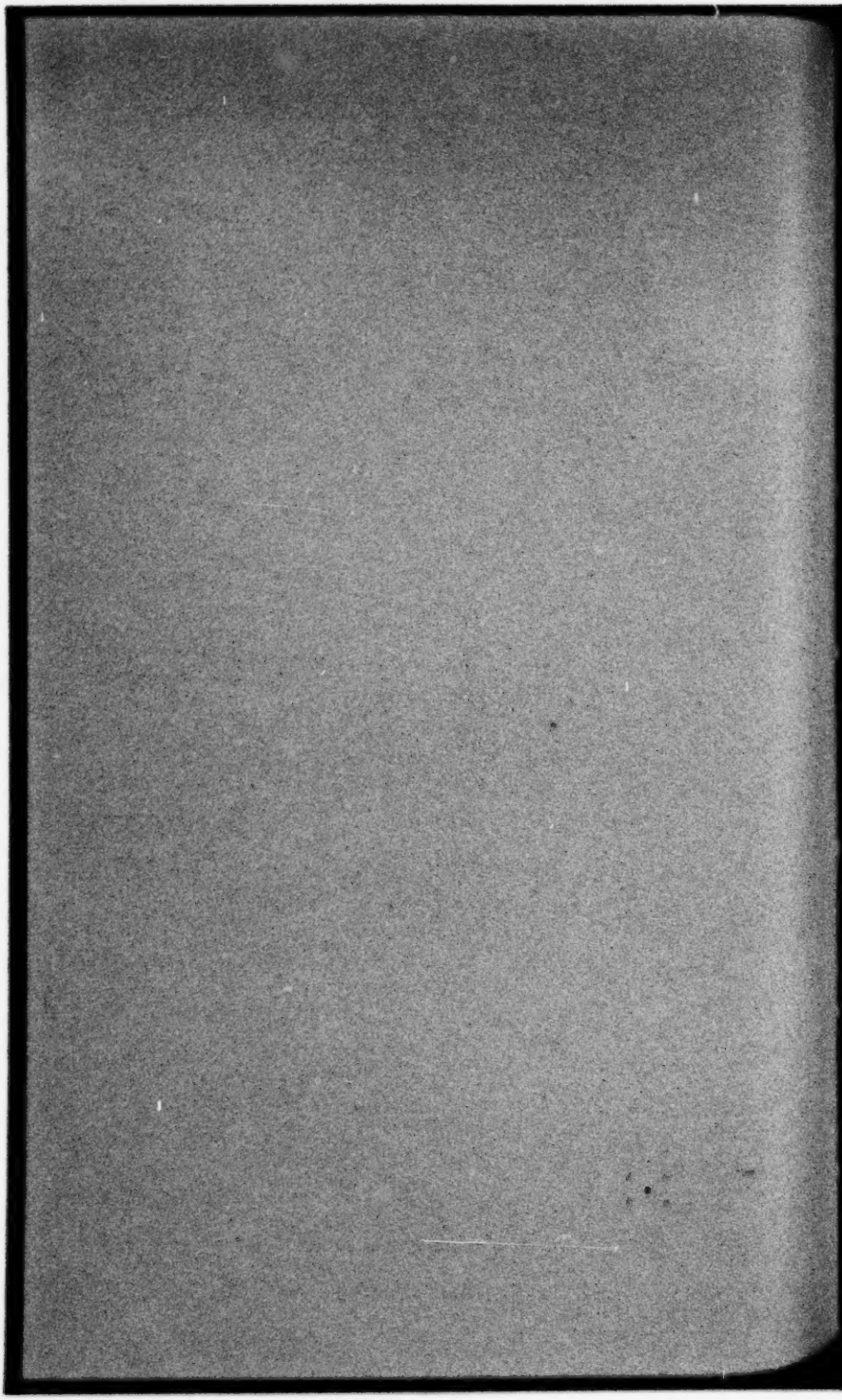

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Supreme Court of the United States.

OCTOBER TERM, 1928.

No. 491.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,
Appellant,

—against—

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE and JOHN ARTHUR BROOKE,
Appellees.

BRIEF OF APPELLANT.

I.

THE OPINIONS IN THE COURTS BELOW.

Two opinions were delivered below.

The first opinion, May 26, 1927, was in the California District Court of Appeal, Second Appellate District, Division Two (Intermediate Court) and is reported 53 California Appellate Decisions 457 (as yet, not otherwise officially reported).

Such opinion is printed in the record (R. 89-103).

The second opinion, March 27, 1928, was in the Supreme Court of the State of California (highest court of the State) and is reported 75 California Decisions 481 (as yet, not otherwise officially reported).

Such opinion is also printed in the record (R. 106-109).

The lower Court took that view of the case which the appellant here urges to be the correct view of the case.

II.

JURISDICTION.

The appellant filed herein its statement under paragraph 1 of Rule 12 of the Revised Rules. On December 3, 1928, a minute was made herein to the effect that probable jurisdiction had been shown by the appellant's statement, so filed.

III.

STATEMENT OF THE CASE.

A. The proceedings resulting in the judgment appealed from.

On April 8, 1926, John James Uttley Brooke, an employee of Morris Pleasure Fishing, Inc., was drowned in the waters of Santa Monica Bay, California. His death occurred in the course of and arising out of his employment.

Proceedings for compensation under the California Workmen's Compensation, Insurance and Safety Act of 1917 (as amended) were instituted before the Industrial Accident Commission of the State of California.

The appellees Sarah Jane Brooke and John Arthur Brooke filed their application for adjustment of claim (R. 10-11) on April 24, 1926.

The appellant, the insurance carrier for the employer of Brooke, having been made a party to the proceedings

(R. 8) filed its answer on June 2, 1926 (R. 12-13) and in such answer denied the application of the Compensation Act with respect to the accident which resulted in the death of Brooke, alleged that Brooke at the time of his death was engaged in maritime employment and was subject to the Admiralty Law and not the Compensation Act, alleged that the Industrial Accident Commission had no jurisdiction in the matter by reason of the maritime employment of Brooke, and denied any and all liability in the matter under the Compensation Act and its amendments (R. 13).

Hearings were had before the Industrial Accident Commission (R. 14-49). In the proceedings before the Industrial Accident Commission the case at bar was designated by the claim number "L. A. 6044". The record herein shows certain hearings in another case, the Gregory case, distinguished by the claim number "L. A. 5986". Another employee named Gregory met his death in the same accident with Brooke, and by stipulation in the case at bar (R. 15) the testimony of certain witnesses in the Gregory case was made evidence and testimony in the instant case.

The constitutional question herein involved was distinctly recognized by the Industrial Accident Commission. The first of the stated issues before the Commission was as follows: "Has this Commission jurisdiction in this proceeding, to wit, was the employment maritime" (R. 16).

It appearing that the applicants Sarah Jane Brooke and John Arthur Brooke were neither wholly nor partially dependent for support upon the decedent Brooke, it was ordered or awarded by the Commission that neither of them was entitled to anything from either the employer, Morris Pleasure Fishing, Inc., or the insurance carrier, the present appellant (R. 50).

In the findings and award of the Commission, filed

October 6, 1926 (R. 49-51), it was decided, however, that the employee was not engaged in maritime employment and that both employer and employee were subject to the provisions of the California Workmen's Compensation, Insurance and Safety Act of 1917, and the Amendments thereto (R. 50). In view, however, of the non-dependency of the claimants, the award was limited to the reasonable expenses of the employee's burial, found to be in the sum of one hundred fifty dollars (R. 50).

The present appellant, on October 21, 1926, made application to the Commission for a re-hearing (R. 51-55) and on such application the exclusive jurisdiction of the Admiralty Law was again asserted and the jurisdiction of the Commission again challenged (R. 52-54).

The Industrial Accident Commission by order filed November 5, 1926, denied the application for a re-hearing (R. 55).

Whereupon the present appellant applied to the District Court of Appeal of the State of California, Second Appellate District, Division Two, for a writ of review (R. 1-7). In such petition the jurisdiction of the Industrial Accident Commission to make any award under the Compensation Act was again challenged and the exclusiveness of the admiralty and maritime jurisdiction asserted (R. 5-6).

The District Court of Appeal granted the writ of review (R. 8-9) and thereafter, on May 26, 1927, in a long opinion (R. 89-103), sustained the contentions of the present appellant, namely, that the matter lay exclusively within the admiralty or maritime jurisdiction and that the Industrial Accident Commission was without jurisdiction to render any award.

The present appellees, aggrieved by the decision of the District Court of Appeal, thereupon petitioned the Supreme Court of the State of California for a hearing of the matter (R. 56-88). Referred to in their petition

and attached thereto as an exhibit is the opinion in the District Court of Appeal (R. 89-103).

The Supreme Court of the State of California granted the appellees' application for a hearing (R. 104), the matter was submitted to it for consideration (R. 105) and on March 27, 1928, the Supreme Court of the State of California affirmed the award of the Industrial Accident Commission (R. 105) (R. 110) with the opinion of that date which appears in the record (R. 106-109).

Application was made by the present appellant to the California Supreme Court for a re-hearing. Such petition for a re-hearing was denied on April 26, 1928 (R. 109).

It is this judgment of the Supreme Court of the State of California, rendered March 27, 1928, affirming the award of the Industrial Accident Commission, from which the present appeal is taken. Such judgment is the one specified in the petition herein for the order allowing appeal (R. 111) and upon which petition all subsequent proceedings in relation to the allowance and perfection of the appeal herein, were had.

B. The Facts.

The following quoted paragraph summarizing most of the essential facts is identically worded in each of the two opinions delivered below (R. 90) (R. 106-107):

> "The evidence taken at the hearings showed the facts to be as follows: The Morris Pleasure Fishing, Inc., is a corporation which carries on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels, for the accommodation of the public seeking recreation in deep-sea fishing. In the fishing seasons its practice has been to have excursions daily from Santa Monica Bay to the ocean fishing grounds, a distance of three to five miles, with fixed charges

both for half-day and full day trips. For use in this business the company has several vessels, ranging from four to fifteen tons registry, equipped with gas engines and capable of cruising a distance of 500 miles. The business has been confined entirely to the maintenance of these pleasure-fishing vessels and the transportation of patrons to and fro by water, except that excursionists have also been supplied with bait. As one of the necessary incidents of its business the company employs seamen to navigate its vessels and before and at the time of the accident which occasioned Brooke's death, he was in the company's employ as an apprentice navigator and seaman. In that capacity he made daily trips as required with the company's vessels, and at times substituted as 'spare skipper' for one of the regular skippers. On April 8, 1926, one of the company's fishing vessels called 'W. K.' of about seven tons registry, was moored, with no one aboard, in Santa Monica Bay about three-quarters of a mile to a mile from the pier. A storm having arisen, the vessel broke from her moorings early in the afternoon, and began to drift toward the shore. In an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employee, named Gregory, put off from the pier [*with the captain himself, in a boat about eighteen feet long], with the purpose in mind of boarding the 'W. K.' and returning her to her anchorage. But as they neared the drifting vessel, their boat was capsized by a heavy wave and all three were drowned."

[**As printed*, these words omitted at Record, p. 107.]

The facts as above stated are supported by the cumulative testimony of Captain Clifford A. Morris, a cousin of the Captain Morris who was drowned (R. 27-30), the testimony of John P. Dugan (R. 31), the testimony of Josephine Morris (R. 38-41), the testimony of

Captain Clifford A. Morris, given in the Gregory case (R. 42-46) and the testimony of John T. Dugan given in the Gregory case (R. 46-48). As above stated, the testimony in the Gregory case was stipulated as evidence in the case at bar (R. 15).

The testimony of Sarah Jane Brooke (R. 17-25), of John Arthur Brooke (R. 25-27) and of Jennie Gregory (R. 34-38) may be utterly disregarded by this Court, as having to do solely with the issues of relationship and dependency, of no present concern in the case.

Upon the hearings themselves, the fact that the locus of the accident was in or upon public navigable waters, seems to have been assumed by all parties. In any event the present appellees at no place contradicted the repeated assertions of appellant that the waters of Santa Monica Bay were such navigable waters. Furthermore in the application of the present appellees to the California Supreme Court for a hearing of the matter after the District Court of Appeal had ordered the award of the Commission to be annulled, the present appellees definitely alleged and admitted that "the injury occurred upon waters susceptible to navigation" (R. 57). This was alleged by the appellees as one of the "dominant facts" in the case. There are other allegations made by the appellees appearing in the record, of similar import (R. 72).

The finding as contained in identical language in each of the opinions below (R. 91) (R. 107), to wit, "The Commission does not dispute the fact that the casualty occurred in navigable waters", is thus more than amply justified.

Brooke was employed as an apprentice navigator and seaman and his death arose out of and in the course of his employment. The answer interposed before the Commission, did not deny the latter fact. Such answer denied only that "the accident" was subject to the pro-

visions of the Compensation Act (R. 13). The findings of the Commission (R. 49) state that Brooke *"while employed as a spare skipper"* (italics ours) "* * * sustained injury occurring in the course of and arising out of his employment, as follows: The employee was drowned."

Both the District Court of Appeal (R. 90) and the California Supreme Court (R. 107) held in identical language that "before and at the time of the accident which occasioned Brooke's death, he was in the company's employ *as an apprentice navigator and seaman"* (italics ours).

There is no evidence in the case that Brooke was employed for any other duties such as shore duties or that he had anything to do except in connection with his employer's vessels.

Captain Morris, who was drowned with Brooke, was his superior officer (R. 48), the "W. K." though moored to the buoy in the bay was in commission as a part of the fishing fleet maintained by the employer (R. 43) and when Captain Morris said to Brooke (R. 31) (R. 48) and to Gregory "Come on, boys, let us go out and save that boat", "Come on boys, let us go get her", "Come on boys, let us save it", referring to the drifting "W. K." such words were addressed to them as employees, they were addressed to Brooke as one of the seamen and a "spare skipper", whose duties it appeared were now in connection with one and now with another of the vessels of the small fleet maintained by the employer.

To have suffered injury *in the course of and arising out of his employment*, as found by the Commission and both Courts below, *Brooke must have been acting in the capacity in which he was employed.*

Brooke met his death as an apprentice navigator and seaman and in no other capacity.

IV.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The appellant urges each of the Assigned Errors specified in the Assignment of Errors which accompanies the petition for the order allowing appeal (R. 111-113) and which are similarly set forth in the Statement of Points to be Relied Upon, which was served and filed pursuant to the provisions of paragraph 9 of Rule 13 of the Revised Rules (R. 122-124).

Such errors there assigned may be here less formally set forth.

The errors which were committed by the Supreme Court of the State of California in affirming the award made by the Industrial Accident Commission were as follows:

1. In holding that Brooke was not employed pursuant to a martime contract.

2. In holding that Brooke was not engaged in a maritime employment.

3. In holding that Brooke was not engaged in performing a maritime service under a maritime contract.

4. In holding that the injury or accident suffered by Brooke was not a maritime injury or accident.

5. In holding that the business of the employer of Brooke was not a maritime business or industry.

6. In holding that the California Compensation Act with the remedies thereunder were to be applied by reason of the death of Brooke.

7. In holding that all matters in relation to

the death of Brooke were not exclusively within the admiralty and maritime jurisdiction of the United States Courts pursuant to Section 2 of Article III of the Federal Constitution.

8. In holding that the application of the California Compensation Act and the remedies thereunder to the matters in relation to the death of Brooke did not effect a result contrary to or in violation of Section 2 of Article III of the Federal Constitution.

9. In holding that the Industrial Accident Commission had jurisdiction to make an award in relation to the death of Brooke, such holding being in contravention of Section 2 of Article III of the Federal Constitution.

10. In holding that the award of the Industrial Accident Commission in relation to the death of Brooke should be affirmed and further in affirming the same, such holding and such affirmance being in contravention of Section 2 of Article III of the Federal Constitution.

V.

ARGUMENT.

A. Statement Introductory to Summary.

The question for determination will be whether the California Workmen's Compensation, Insurance and Safety Act of 1917, as amended, as it was construed and applied to the facts in this case by the Court below, contravenes Section 2 of Article III of the United States Constitution which extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

The appellant contends that the contract of employment of the decedent Brooke, the capacity and character of his service, the nature, character and extent of his

employer's business, the place and manner in which such business was carried on, the character of the accident in which Brooke met his death and the locus of the accident and death, in short, the facts and circumstances of the case, operating together, defeated all application of the Compensation Act with respect to the matter.

It is the claim of the appellant that the facts and circumstances are not such as to permit of any application of the local law as against the exclusiveness of the admiralty and maritime jurisdiction.

B. Summary of the Argument.

Point 1. The principle has been established that State Compensation Acts are not applicable to employees engaged in performing a maritime service or engaged in a maritime occupation who in the course of their employment are injured or meet death upon navigable waters.

Point 2. It is not necessary as an incident or *sine qua non* to admiralty jurisdiction that interstate or international navigation or commerce be involved.

Point 3. The fact that the employer's sole business was to furnish pleasure or recreation to devotees of deep-sea fishing does not take the case out of admiralty. The owners of the employing company were not in business "for pleasure". The company was commercially engaged in furnishing a service for which its patrons paid. The operation of the company's vessels in the furnishing of such service was commerce and navigation, and the contract of employment of Brooke as a seaman and apprentice navigator was a maritime contract of employment.

Point 4. The "W. K." was in commission as a part of the employer's fleet at the time of Brooke's attempt to

reach her. Such attempt was made in the course of his employment and upon the order of his superior officer. As long as his employment was maritime, it was not essential to the attachment of admiralty jurisdiction that he have been aboard the vessel at the time of the injury or accident. All that is necessary to such jurisdiction is that the injury or accident have occurred upon navigable waters.

Point 5. The facts in the instant case readily distinguish it from all of the cases which were referred to below, either by the Court or counsel, as having qualified or limited the principle established by the cases referred to under Point I. In none of the asserted qualifying or limiting cases was the employee a seaman or apprentice navigator. The State Compensation Act cannot be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this Court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction. Injuries to stevedores or longshoremen, occurring upon navigable waters, have been held to be within the exclusive operation of the maritime jurisdiction, as necessary to the maintenance of uniformity in its general characteristics. This Court in the case of *Steamship Bowdoin Co.* v. *Industrial Accident Commission*, 246 U. S. 648, has held the same with respect to a seaman upon a steamer tied to a wharf. All considerations are equally cogent, for requiring a like determination with respect to the seaman and apprentice navigator in the case at bar.

Point 1.

The principle has been established that State Compensation Acts are not applicable to employees engaged in performing a maritime service or engaged in a maritime occupation who in the course of their employment are injured or meet death upon navigable waters.

The statement made as the summary of this, the basic point of the appellant's argument, is founded upon a line of decisions in this Court, to which reference need only be made. Most of these decisions have been so recently considered and reconsidered by the Court in their various applications that it would seem unnecessary so far as their primary import is concerned, to quote from or discuss them at length on the brief.

Southern Pacific Company v. *Jensen*, 244 U. S. 205;

Clyde Steamship Company v. *Walker*, 244 U. S. 255;

Steamship Bowdoin Company v. *Industrial Accident Commission*, 246 U. S. 648;

Peters v. *Veasey*, 251 U. S. 121;

Knickerbocker Ice Company v. *Stewart*, 253 U. S. 149;

Washington v. *Dawson & Company*, 264 U. S. 219;

T. Smith & Son, Inc. v. *Taylor*, 276 U. S. 179;

Northern Coal & Dock Co. v. *Strand*, U. S. Supreme Court No. 41, October Term, 1928, decided December 10, 1928.

Point 2.

It is not necessary as an incident or *sine qua non* to admiralty jurisdiction that interstate or international navigation or commerce be involved.

The chief point of the argument of the appellees, it may be judged from the petition for a hearing which was presented by them to the California Supreme Court, will be that in the instant case there is no proof that interstate or international commerce or navigation is involved. They contend (R. 57) that "the business of the employer was entirely local to the City and Port of Santa Monica" and that there was "not the slightest taint of interstate or foreign commerce".

In the petition referred to, the present appellees further state (R. 67) that "The Federal courts in admiralty (verb is missing from the record, probably 'act' or 'assume jurisdiction') only with respect to interstate and foreign commerce and the ships that carry it, or contracts with or torts to persons that assist in its continued movement. This jurisdiction of the Admiralty Court in maritime matters, therefore, exists only because of interstate and foreign commerce as such."

Nothing, it is submitted, is more fundamentally wrong than such statements of the present appellees.

The admiralty jurisdiction of the Federal courts cannot be made to depend upon or be derived from the power of Congress to regulate commerce between the States. Such jurisdiction depends only upon the grant contained in Section 2 of Article III of the Federal Constitution.

The Propeller Genesee Chief et al. v. *Fitzhugh et al.*, 53 U. S. (12 How.) 443;
The Belfast, 74 U. S. (7 Wall.) 624, 640-641.

It was definitely held by the Court in *The Belfast*, both with respect to maritime torts and maritime contracts, that the admiralty jurisdiction prevails even though the voyage upon navigable waters was only between ports of the same State.

In *The Robert W. Parsons*, a canal boat engaged in traffic on the Erie Canal, wholly within the State of New York, was held subject to the admiralty jurisdiction. *The fact that the Erie Canal was a connecting highway for interstate commerce was only important as a factor in determining whether the canal constituted public navigable waters of the United States.* The character of the waters being thus once determined, the jurisdiction applied to the vessel although its voyages were entirely within the State.

The Robert W. Parsons, 191 U. S. 17.

In the case of *Rodgers & Hagerty, Inc.* v. *The City of New York* (Circuit Court of Appeals, 2nd Circuit), admiralty jurisdiction was held to apply to a contract for the removal of ashes from a sunken scow belonging to the City of New York and used by its Street Cleaning Department for the disposal of refuse. Certiorari was refused by this Court.

Rodgers & Hagerty, Inc. v. *City of New York*, 285 Fed. 362;
City of New York v. *Rodgers & Hagerty, Inc.*, 261 U. S. 621.

In the case of *Workman* v. *New York City*, admiralty jurisdiction was sustained and the City of New York held liable for damages caused by the negligent operation of one of its fire boats. It was asserted and taken to be the fact that the fire boat was an instrumentality of the Municipal Corporation in its municipal affairs.

This fact did not prevent the application of the Admiralty Law. Certainly the City of New York as a Municipal Corporation in the operation of one of its fire boats was not engaged in commerce of any kind whatsoever. It was, however, engaged in navigation upon navigable waters when the wrong was committed. The operation of the fire boat though "local to the City of New York" was nevertheless within the maritime jurisdiction.

Workman v. *New York City*, 179 U. S. 552.

The application made to the California Supreme Court by the present appellees has been faithfully reproduced typographically in the printed record. A hasty glance at the record (R. 57, 87) shows that emphasis has been and will be laid by the appellees upon the words "international or interstate relations" and "direct relation to navigation and commerce in its international and interstate aspects". These words were isolated from their context as contained in various decisions of the Court.

But this Court has from time to time said much more than "international or interstate relations" and "direct relation to navigation and commerce in its international and interstate relations". There is another norm by which the extent of the admiralty jurisdiction is to be measured.

This Court has insisted that no local law or local rule would be permitted to "*work material prejudice to any characteristic features of the general maritime law*, OR interfere with the proper harmony or uniformity of that law in its international or interstate relations". (Appellant has here reversed the emphasis and shown the plural limitation.)

Grant Smith-Porter Co. v. *Rohde*, 257 U. S. 469, 476;

Millers' Indemnity Underwriters v. *Braud*, 270 U. S. 59, 64.

The appellees seizing upon and emphasizing the latter words and neglecting the former have improperly concluded that admiralty applied only to interstate or foreign commerce.

The Court, in fact, has at times referred to the limitations upon the operation of the local law *without any reference at all to interstate or foreign commerce.*

In one case it is stated:

> "When injured certainly he was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law."
>
> *Alaska Packers Ass'n* v. *Industrial Acc. Commission,* 276 U. S. 467, 469.

In another case it is stated:

> "It is settled by our decisions that where the employment, although maritime in character pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity."
>
> *Sultan Railway & Timber Co.* v. *Department of Labor,* 277 U. S. 135, 137.

In support of the erroneous contention of the present appellees, there are references, in their petition to the Court below, to certain authorities of which a few must be briefly discussed.

In *Sherlock et al.* v. *Alling, Admr.*, 93 U. S. 99, the only point which was decided was that until Congress has acted otherwise, there are certain matters on which the States may legislate, as long as there is no interference with the navigation and use of vessels and no interference with interstate commerce. The administrator of the deceased person brought suit under the Indiana Death Statute. The collision of the vessels took place in the Ohio River but within the territorial jurisdiction of Indiana. The Court sustained the action as no encroachment on the "commercial power" of Congress, although the injury was referred to as a "marine tort". *The decedent was a passenger on the vessel which burned as a result of the collision.* He was a citizen of Indiana, the "tort" though on the river, occurred in Indiana, and since Congress had not legislated regarding such "marine torts" the administrator was permitted to pursue his remedy in the State courts under the Indiana Statute. A careful reading of the case will show nothing in support of the appellees' contention that for maritime jurisdiction to attach, the navigation or commerce involved must be other than intrastate.

In *Anderson* v. *Pacific Coast S. S. Co.*, 225 U. S. 187, the only point decided was that State laws concerning pilotage are regulations of commerce, but they fall within that class of powers which may be exercised by the States until Congress sees fit to act. There is nothing in the case that expressly or impliedly supports the appellees' erroneous contention under discussion.

In *The Daniel Ball* v. *The United States*, 77 U. S. (10 Wall.) 557, two points were involved; first, whether the steamer was engaged in transporting merchandise and passengers on a navigable water of the United States within the meaning of the Acts of Congress regulating in-

spection, and second, whether those Acts are applicable to a steamer engaged as a common carrier between places in the same State when a portion of the merchandise transported is destined to places in other States or comes from places without the State, the steamer not running in connection with or in continuation of any line of steamers or other vessels or any railway line leading to or from another State. The Inspection Acts applied to vessels operating upon "navigable waters of the United States". The river involved was the Grand River in the State of Michigan. It was held that such river was a public navigable water of the United States by reason of the fact that from its mouth in Lake Michigan it formed a continuous highway for commerce with other States and foreign countries. The language quoted by the appellees in their petition to the California Supreme Court is quoted from the latter half of the opinion where the sole question concerned is the question of the regulation of commerce under the power of Congress to regulate interstate or international commerce, and where the Court held that a steamer is engaged in commerce between the States even though she operated only between two ports of the same State where she carried goods brought from without the limits of the State and destined to places without the State. There is nothing express or implied in the decision in support of the appellees' contention that admiralty jurisdiction is dependent upon the fact that interstate or international commerce be involved.

The General Smith, 17 U. S. (4 Wheat.) 438, does not expressly or impliedly hold that interstate or international commerce or navigation must be involved as a necessary incident to maritime jurisdiction. This case involved the peculiar American doctrine with respect to supplies furnished to a ship in its home port. It was

held that the law of Maryland (the common law), the home port of the ship, gave no lien for services or supplies, so under the maritime law no specific lien could be enforced in admiralty *in rem*. But the Court said the admiralty jurisdiction would have been sustained had the suit been *in personam*. "Admiralty rightfully possesses a general jurisdiction in cases of material-men" (Opinion at p. 443). The only peculiarity in the situation is that in respect of ships not in their home port a special remedy is given to the material-men by the Admiralty Law. This does not prove or even argue that ships in their home port are not subject to the Admiralty Law. If the State law gives the lien for supplies furnished in the home port, such lien can be enforced *in rem* only in the Admiralty Courts.

The Robert W. Parsons, 191 U. S. 17;
The Lottawanna (*Rodd* v. *Heartt*), 88 U. S. (21 Wall.) 558.

The last case above cited, *The Lottawanna*, was cited to the California Supreme Court by the present appellees (R. 67) in support of their contention under discussion. That case, it is submitted, fails to support the appellees in their contention. The fact that the case recognizes a sphere of matters which may be regulated by the States until Congress acts, is not argumentative of their contention. On the contrary, the holding that a maritime lien given by the State law to a material-man who furnishes a ship in its home port can only be proceeded upon *in rem* in the Admiralty Court, would seem to argue against the appellees' contention, for the right (the lien) created by the local law and involving a ship in its home port (the local jurisdiction without any connection with interstate or foreign commerce), is held to be enforcible *in rem* only in the Admiralty Court.

With respect to the abbreviated quotation from *The Propeller Genesee Chief et al.* v. *Fitzhugh et al.*, 53 U. S. (12 How.) 443, as it appears in the record (R. 70), it must be said that the sense of the original is by no means thereby conveyed. The paragraph from which the quoted language is taken appears at page 458 of the report (instead of at p. 457 as printed), and simply describes two enactments of Congress, namely, *Section 9 of the Judiciary Act of 1789*, and the *Act of February 26, 1845* (*5 Stat. at Large 726*). The Court says, "The jurisdiction under both laws is confined to vessels enrolled and licensed for the coasting trade; and the Act of 1845 extends only to such vessels when they are engaged in commerce between different States or territories. It does not apply to vessels engaged in domestic commerce of a State nor to vessels or boats not enrolled or licensed for the coasting trade under the authority of Congress." There is nothing in the case which can be interpreted in support of the appellees' contention that the Admiralty Law applies only to interstate or international commerce or navigation.

See also:

Ex parte Boyer, 109 U. S. 629, 632;
In re Garnett, 141 U. S. 1, 15, 17.

Point 3.

The fact that the employer's sole business was to furnish pleasure or recreation to devotees of deep-sea fishing does not take the case out of admiralty. The owners of the employing company were not in business "for pleasure". The company was commercially engaged in furnishing a service for which its patrons paid. The operation of the company's vessels in the furnishing of such service was commerce and navigation, and the contract of employment of Brooke as a seaman and apprentice navigator was a maritime contract of employment.

The present appellees would defeat the admiralty jurisdiction for the reason, as stated by them, that the employer's business was "a pleasure concession pure and simple" (R. 57). They assert it was "a local pleasure concession business in no way connected with that commerce and navigation as controlled by the Admiralty Courts" (R. 72).

It is further asserted by the appellees *in the record*: "Though it (employer's business) *involved a use of the sea, of the operation of vessels upon navigable waters, and the carriage of passengers for hire,* it still was not a maritime business in the sense that the word 'maritime' is used in connection with the maritime law in the admiralty courts. It was a business purely local to the City of Santa Monica" (R. 72).

It is urged that the appellees' contentions constitute a new and erroneous doctrine. The motives of the employer's customers or patrons in riding upon its boats and the fact that they did so for recreation cannot affect the fact that the corporation employer was in business and commerce, and in operating the boats it was

engaged in navigation for strictly monetary commercial gain.

The carriage of passengers for hire is commerce.

The Moses Taylor, 4 Wall. 411;
County of Mobile v. *Kimball*, 102 U. S. 691, 702;
Gloucester Ferry Company v. *Pennsylvania*, 114 U. S. 196;
Covington Bridge Co. v. *Kentucky*, 154 U. S. 204;
Bennett v. *The United States*, 194 Fed. 630, affirmed *Bennett* v. *U. S.*, 227 U. S. 333;
United States v. *Hoke*, 187 Fed. 992, affirmed *Hoke* v. *U. S.*, 227 U. S. 308.

The fact that the business of Tyson & Brother was the resale of theatre tickets, the aiding of anxious and willing-to-pay customers in the pursuit of recreation and pleasure, did not prevent the Court from giving them its protection in preventing the enforcement, as a violation of the Fourteenth Amendment, of a New York Statute, regulating such "pleasure business".

Tyson & Brother v. *Banton*, 273 U. S. 418.

A standard work on admiralty gives the following:

> "Each nation has its mode of construction, rigging and navigation, and its peculiar kind of craft, but all are ships and vessels that are manned by a master and crew and are devoted to the purposes of transportation and commerce, whether in the fisheries or in passenger or pleasure service or in trade."

Benedict on Admiralty (5th Ed.) Vol. I, Section 53, page 74.

Brooke was engaged as a seaman and apprentice navigator with the vessels which made regular voyages of from three to five miles out from shore. At times they went over to "the red-cod bank" which was about ten miles straight out (R. 39). These voyages over three miles out were all beyond the territorial jurisdiction of the State of California.

California Constitution, Article XXI Section 1. (Printed in Appendix.)

Brooke was hired to assist in the operation and management of the vessels which had a five hundred mile cruising capacity and at times he had actual charge of a boat. These boats made regular trips out to the high seas, such trips were voyages in the strict maritime sense of the word, there was a regular service "and each voyage had a place of origin and a place of destination, though the termini may not have been geographically constant. Since the ships did actually convey passengers to and fro between the anchorage in Santa Monica Bay and the deep-sea fishing banks they were not only capable of use but were in real use as vehicles of nautical transportation, and while performing their service to patrons they were in fact engaged in commerce upon navigable waters" (quoted from Opinion of Johnson, *J.*, in District Court of Appeal) (R. 92).

The contract of employment of Brooke was a maritime contract of employment.

The Thomas Jefferson, 10 Wheat. 428;
Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372, 379;
Atlantic Transport Co. v. *Imbrovek*, 234 U. S. 52, 62.

Point 4.

The *"W. K."* was in commission as a part of the employer's fleet at the time of Brooke's attempt to reach her. Such attempt was made in the course of his employment and upon the order of his superior officer. As long as his employment was maritime, it was not essential to the attachment of admiralty jurisdiction that he have been aboard the vessel at the time of the injury or accident. All that is necessary to such jurisdiction is that the injury or accident have occurred upon navigable waters.

The appellees have urged that there is no admiralty jurisdiction because Brooke was not actually a part of the crew of the *"W. K."* at the time of the accident, because he was not upon board the ship, but that he was merely on board an eighteen foot skiff sent out from the land to reach "a deserted, drifting vessel, which at the time it started to drift was equivalent only to a floating dock or raft or any other piece of valuable personal property" (R. 73).

The *"W. K."* was in commission as a part of the employer's fleet at the time of the accident (R. 43). The Industrial Accident Commission found that Brooke was employed at the time of the accident as a spare skipper and that his death by drowning occurred in the course of and arising out of his employment (R. 49).

The two lower California Courts have held in identical language that Brooke was an apprentice navigator and seaman and that "in an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employee, named Gregory, put off from the pier with the captain himself, in a boat

about eighteen feet long, with the purpose in mind of boarding the *"W. K."* and returning her to her anchorage" (R. 90, 107).

Brooke met his death as a seaman and apprentice navigator carrying out the orders of his superior officer in an effort to save his employer's maritime property from destruction. His death occurred in or upon navigable waters. It is not necessary to the attachment of the admiralty jurisdiction for him to have been aboard the *"W. K."* or any other vessel at the time of his death.

The Plymouth, 3 Wall. 20, 35;
Atlantic Transport Co. v. *Imbrovek*, 234 U. S. 52, 59-60;

See also:

Southern Pacific Co. v. *Jensen*, 244 U. S. 205 at page 252 (Dis. op. of Mr. Justice Pitney).

Point 5.

The facts in the instant case readily distinguish it from all of the cases which were referred to below, either by the Court or counsel, as having qualified or limited the principle established by the cases referred to under Point 1. In none of the asserted qualifying or limiting cases was the employee a seaman or apprentice navigator. The State Compensation Act cannot be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this Court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction. Injuries to stevedores or longshoremen, occurring upon navigable waters, have been held to be within the exclusive operation of the maritime jurisdiction, as necessary to the maintenance of uniformity in its general characteristics. This Court in the case of *Steamship Bowdoin Co.* v. *Industrial Accident Commission*, 246 U. S. 648, has held the same with respect to a seaman upon a steamer tied to a wharf. All considerations are equally cogent, for requiring a like determination with respect to the seaman and apprentice navigator in the case at bar.

It will be asserted by the appellees that the doctrine established by *Southern Pacific Company* v. *Jensen*, 244 U. S. 205; *Knickerbocker Ice Company* v. *Stewart*, 253 U. S. 149; *Washington* v. *Dawson & Company*, 264 U. S. 219, and the other cases cited above under Point 1, has been limited, qualified or affected by cases decided in this

Court in which effect has been given to a State Compensation Act or the jurisdiction of the local law has been otherwise approved. This Court, it is submitted, has not deviated from the fundamental doctrine, and in those cases in which the local law was given effect to, the same was done either because the essential facts necessary to admiralty jurisdiction did not at all exist or because the local law could be permitted to prevail without in anywise affecting any essential characteristic of the Admiralty Law in its general application.

In *Western Fuel Company* v. *Garcia*, 257 U. S. 233, a stevedore was killed while at work in the hold of a vessel discharging cargo in San Francisco Bay. There was no proceeding under the local Compensation Law. A suit *in personam* based on allegations of negligence was instituted in admiralty by the heirs of the deceased. It was held that the Admiralty Court could entertain jurisdiction for the alleged tort without prejudice to the rule of uniformity. The wrong had been committed within the territorial limits of the State. The remedy which was sought to be applied was an action *in personam* based upon negligence. Actions *in personam* in the Admiralty Court based upon negligence are matters that can be therein litigated in consonance with the machinery and procedure of the Admiralty Court. The situation is entirely different with respect to a Compensation Act which enforces the liability irrespective of negligence or fault. The local death statute, it was held, simply supplemented the admiralty jurisdiction and could be given effect to in the Admiralty Court. The death statute created locally a new right which was ambulatory, at least to the extent of being enforcible *in personam* in a court other than a court of the State. As the employment was, in addition, a maritime employment and the locus of the accident was upon navigable waters, the

Admiralty Court had jurisdiction to enforce the right created by the State law. This is also the doctrine of

Great Lakes Dredge and Dock Co. v. *Kierejewski*, 261 U. S. 479.

These two cases simply decide that a new right created by the State law may be given effect to and enforced in a court of admiralty in those instances where the other essential elements necessary to admiralty jurisdiction exist. Such decisions are far from holding that the State Compensation Act may be applied in the State courts to a state of facts which by virtue of the character of the employment and the locus of the accident are solely within the admiralty jurisdiction. There is no constitutional or statutory inhibition which prevents the Admiralty Court, the essentials to its jurisdiction existing, from giving effect to and enforcing a new right created by the local law. Also, a right sanctioned by the maritime law may be enforced in a State court, as distinguished from the Admiralty Court, through any appropriate remedy recognized at common law. But if such attempt be made to enforce the right, the liability must be measured not by the common law or State standards but by the standards of the maritime law:

Chelentis v. *Luckenbach Steamship Co.*, 247 U. S. 372.

In the case at bar, the rights and liabilities arising out of the death of Brooke must be measured by the maritime law.

In *Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469, the workman was employed generally as a carpenter by a company whose business was the building of vessels. The employee was injured by the employer's negligence

while engaged in construction work on an uncompleted vessel which however had been launched and was lying in navigable waters of the United States in Oregon. The vessel though substantially completed was not ready for delivery and the work which the employee was doing at the time of the injury related solely to the construction. It was held that the contract for the construction of the vessel was non-maritime and that the employee's employment was therefore non-maritime. Although the vessel lay in navigable waters neither Rohde's employment nor his activities at the time had any relation to navigation or commerce. Since shipbuilding is a non-maritime matter there was no relationship at all between the Admiralty Law and the employment. There is no requirement of the Admiralty Law that does or can require uniformity regarding the rights and liabilities arising out of shipbuilding, a non-maritime matter. In the case at bar the employment was maritime and the affected employee was a seaman. Furthermore, although as shown by what is stated in the foregoing, the point was not in itself necessary to the decision of the case, the employer and employee, it was held, had definitely contracted with respect to the Oregon Compensation Act which was optional to accept or reject. In the present case there was no definite contract of employment with reference to the Compensation Act as the Act of California is not optional.

Stress was laid by the Court below (R. 108) upon *State Industrial Commission* v. *Nordenholt Corporation*, 259 U. S. 263. In that case the employee, a longshoreman, died from injuries received while on the dock. A dock is but an extension of the land:

> *Cleveland Terminal & V. R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316.

The locality element necessary to the maritime jurisdiction was thus completely lacking. An injury to a longshoreman or even a seaman upon the land was never justiciable within the admiralty jurisdiction. The case of *State Industrial Commission* v. *Nordenholt Corporation* approved the application of the local law for the reason that the matter was not within the admiralty jurisdiction. There was no admiralty jurisdiction for the local law to come into conflict with at any time.

In *Millers' Indemnity Underwriters* v. *Braud*, 270 U. S. 59, a diver employed by a shipbuilding corporation was submerged from a small floating barge or pontoon at anchor in a navigable river thirty feet from the shore, to saw off timbers from an abandoned set of ways once used for launching ships and which had become an obstruction to navigation. While the employee was working upon the submerged timbers his air supply was in some way cut off and he died through suffocation. The Court below, *sub nom Millers' Indemnity Underwriters* v. *Bourdreaux*, 261 S. W. (Texas) 137, 140 (not officially reported) states that the employee was not engaged in work upon or connected with the barge and could not be considered a seaman. In the case under discussion, though the tort was a maritime tort, the work of the diver was not so directly connected with navigation as to fall exclusively within the maritime jurisdiction. In the case at bar the employee was a seaman and his work was directly connected with navigation and commerce.

In *Alaska Packers Association* v. *Industrial Accident Commission of the State of California*, 276 U. S. 467, the Compensation Act was permitted to apply because the injury was received by the employee while actually upon the land, and his contract for services involved services in connection with the canning operations conducted by the employer upon the land as well as services

as a seaman upon one of the employer's ships. When injured, therefore, the employee was not a seaman. He was simply an employee engaged in connection with the canning operations of the employer. The Compensation Act was therefore permitted to apply for the reason, as stated by the Court "When injured certainly he was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law. The work was really local in character" (Opinion at p. 469).

In the case at bar, Brooke was employed only as a seaman and apprentice navigator. He had no work of any character in connection with any operations upon the land. The accident which resulted in his death occurred upon navigable waters while he was performing a service under the direction of his superior, in connection with an attempt to save a ship of his employer, in commission and actually afloat upon navigable waters.

Sultan Railway & Timber Co. v. *Department of Labor and Industries*, 277 U. S. 135. The employees involved in this and the companion case decided therewith were engaged in logging and saw-mill operations. Their work it is true was done upon navigable waters, but it was strictly confined to the immediate locality. There was no element of transportation. Those in the one case who were engaged in putting sawlogs into booms did their work before any transportation began. Those in the other case who took apart the booms and guided the logs to the conveyor leading to the saw-mill did their work after all transportation had been completed. The employees were not seamen or apprentice navigators or in any way connected with vessels or transportation. The facts are clearly distinguishable from the instant case where a seaman, navigation and commerce are directly involved.

As stevedoring contracts and injuries occurring on navigable waters to stevedores and others working under maritime contracts are matters essentially and characteristically maritime, so was the accident to Brooke, a seaman and apprentice navigator. The local law cannot interfere. To permit the application of the Compensation Act to seamen and apprentice navigators would interfere with a characteristic feature of the maritime law in its general and uniform application.

This Court has already denied application of a prior Workmen's Compensation Act of the State of California in the case of a seaman employed, like Brooke in the instant case, under an oral contract of employment.

> *Steamship Bowdoin Co.* v. *Industrial Accident Commission of the State of California*, 246 U. S. 648.

In the case just cited the record in this Court (file No. 25,899) shows (pp. 8-9) the facts stated above regarding the seaman's employment.

CONCLUSION.

The judgment of the Supreme Court of the State of California affirming the award of the Industrial Accident Commission should be reversed.

Dated, New York, N. Y., February 13, 1929.

Respectfully submitted,

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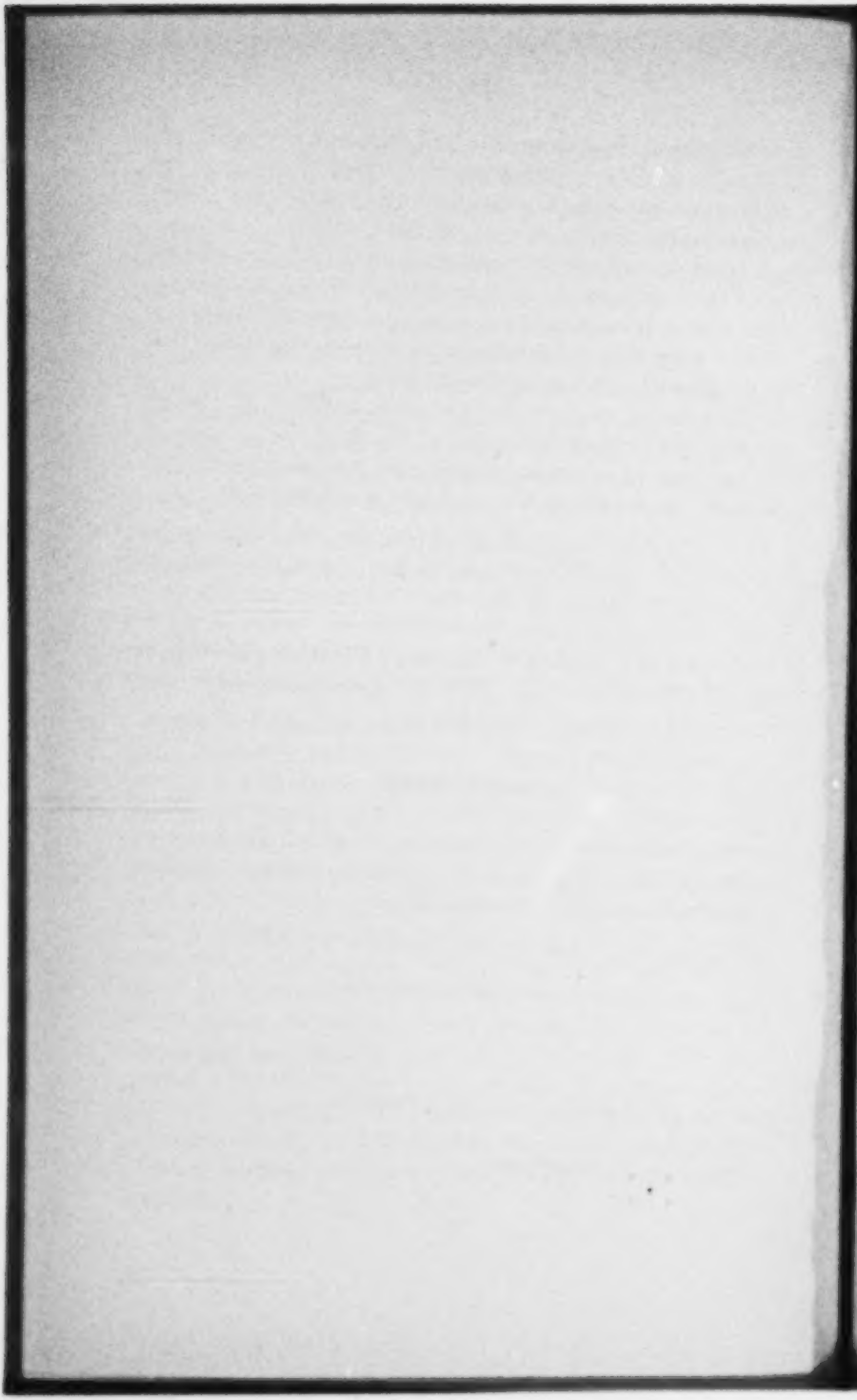

Appendix.

CONSTITUTION OF CALIFORNIA.

Article XXI, Section 1:

"The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south * *; thence running in a straight line, in a southeasterly direction to the River Colorado, * *; thence down the middle of the channel * * * to the boundary line between the United States and Mexico * *; thence running west and along said boundary line *to the Pacific Ocean, and extending therein three English miles;* thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line * * * to the point or place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast."

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1928

No. 491

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,

Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE, AND JOHN ARTHUR BROOKE,

Appellees.

BRIEF FOR APPELLEES

I

REFERENCE TO THE OPINION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA

The decision of the Supreme Court of the State of California, now on appeal before this court, will be found by this court on pages 106 to 109, inclusive, in the printed transcript of record. This opinion, though not yet printed in the official California Reports, may be found in printed form in the Advance Sheets of the California Decisions, volume 75, page 481.

II

STATEMENT OF THE CASE

1. The Facts.

The Morris Pleasure Fishing, Inc., is a corporation whose business is that of maintaining and operating a small fleet of fishing vessels for the accommodation of the general public seeking recreation in deep sea fishing.

Its headquarters is at the city of Santa Monica Municipal Pier (R. 39), which is fifteen or sixteen hundred feet long (R. 48). In the fishing seasons, its practice has been to send these small fishing vessels out from Santa Monica Pier to the fishing grounds in *Santa Monica Bay,* carrying passengers who desire to fish at fixed charges for half-day and full-day trips. For use in this business, this corporation on and prior to April 8, 1926, had six vessels (R. 39). On April 8, 1926, there were "four in operation, two laid up" (R. 42). The four in operation ranged from four to fourteen tons registry (R. 43). Each boat is captained by a licensed boat operator or skipper, who is assisted by a crew of one or more employees (R. 30, 40). The business is confined entirely to the maintenance and operation of these pleasure fishing vessels and transportation of patrons desiring to fish in the waters of Santa Monica Bay, except that the corporation would supply these patrons with bait.

These vessels, equipped with gas engines (R. 43), were capable of cruising a distance of five hundred

miles (R. 44), but none ever did. **THESE VESSELS PRIOR TO APRIL 8, 1926, NEVER LEFT THE WATERS OF SANTA MONICA BAY ON THESE FISHING TRIPS (R. 43).**

Santa Monica Bay is described by witness Captain Cliff A. Morris (R. 43) as follows:

> "Q. Where did they usually go to fish?
>
> A. In Santa Monica Bay, as they call it. It is a bay inside of a line drawn between Point Firmin and Point Duma.
>
> Q. About how far from shore?
>
> A. About ten miles, approximately, from the Santa Monica Pier.
>
> Q. Did they ever make any exception to the place where they went fishing? Just describe it yourself.
>
> A. When they land at San Pedro, they went outside, up Santa Monica Bay, for repairs, *but they never run outside.* They have *since,* our boats, this summer, have gone outside ten miles, ten miles, *but not then.*" (Italics ours.)

These fishing vessels leave Santa Monica Pier with patrons on board, going out to fishing grounds two and one-half or three miles (R. 39), but not more than five miles (R. 43) except that "sometimes they go over to what they call 'the rock-cod bank,' about ten miles straight out." (R. 39.)

The only time, apparently, these vessels ever leave Santa Monica Bay is when they go to San Pedro, thirty miles around the shore, *for repairs* (R. 43).

These vessels were used exclusively for carrying patrons desiring to do deep sea fishing (R. 43). This

corporation did not use these vessels for commercial fishing for its own benefit (R. 41, 43) ; the fish caught belonged to the patrons (R. 40).

As a necessary incident to the operation of these vessels the company employed seamen to navigate the vessels.

John James Uttley Brooke, an unmarried minor, eighteen years of age, on and prior to April 8, 1926, was employed by this corporation as an apprentice navigator and seaman (R. 28, 30). He had applied for a license as a navigator or skipper or boat operator, but could not get one (R. 30).

Leland Gregory, married, and the father of two minor children (R. 35, 37), was employed by this corporation as a boat operator or master of a boat (R. 44) on and prior to April 8, 1926. Captain Stanton Morris was the official in charge of this business (R. 48) and the immediate superior of Brooke (R. 48) and Gregory.

On April 8, 1926, the sea was rough and none of these boats could be operated that day (R. 43, 40). One of these vessels, the "W. K.," was moored, with no one aboard (R. 45, 40), in Santa Monica Bay, about one-half to three-quarters of a mile from the pier (R. 47). In the storm, this vessel, with no one aboard, broke loose from her moorings early in the afternoon and began to drift toward the shore (R. 45). At the time, a group of these employees were gathered on the pier (R. 47). Captain Morris arrived on the scene and said to these employees

(including Gregory and Brooke), "Come on boys, let us save it" (R. 48). Captain Morris, Brooke and Gregory got into an eighteen-foot skiff lying at the wharf and started out toward the drifting vessel. When they were about fifty feet from the vessel "W. K.," their skiff overturned and all three were drowned (R. 47).

Appellant, London Guarantee and Accident Co., Limited, had issued a standard workmen's compensation insurance policy to the employer corporation, Morris Pleasure Fishing, Inc., covering its liability to pay compensation to injured employees of said corporation where such employees suffered industrial injury or death arising out of or in the course of that employment.

2. Two Awards Made by the Industrial Accident Commission

Thereafter, the mother and stepfather of Brooke filed an application or claim for a death benefit with the California Industrial Accident Commission. Likewise, the widow and minor children of Gregory filed another application or claim for death benefit with the Industrial Accident Commission. Hearings were held in the two proceedings, which by stipulation were considered together.

No dependency being shown by the mother and stepfather of Brooke, they were denied a death benefit but were awarded the sum of one hundred fifty dollars on account of burial expense, pursuant to the provisions of section 9 (*c*) 3, which provides:

"If the deceased employee leaves no person dependent upon him for support, the employer shall be liable for the reasonable expenses of his burial, not exceeding one hundred fifty dollars and such other benefit as may be provided by law."

In the *Gregory* case, the widow and minor children of the deceased employee Gregory were found to be wholly dependent and were awarded a death benefit of five thousand dollars, based on maximum annual earnings, in addition to funeral expenses in the sum of one hundred fifty dollars, a total of five thousand one hundred fifty dollars, pursuant to the provisions of section 9 (*c*) 1, which provides:

"In case the deceased employee leaves a person or persons wholly dependent upon him for support, such dependents shall be allowed the reasonable expenses of his burial, not exceeding one hundred fifty dollars, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of his death has accrued and become payable, under the provisions of subsection (*b*) hereto, to make the total disability indemnity and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents."

The award made by the California Industrial Accident Commission in the *Gregory* case has never been appealed, but, by stipulation of all parties, is depend-

ent upon the appeal now before this court. The decision of this court, therefore, in the case at bar will determine whether or not the widow and minor children of Leland Gregory are to receive this award of five thousand one hundred fifty dollars.

These two awards were made under the authority of the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917 (chapter 586 of the California Statutes of 1917, as amended), and particularly under the authority of sections 9 (*c*) 1, 9 (*c*) 3 (above quoted), and section 6 (*a*) of that act. Section 6 (*a*) provides:

> "Sec. 6. (*a*) Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:
>
> (1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.
>
> (2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.
>
> (3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted."

III

SUMMARY OF CONTENTIONS AND ARGUMENT

A

Appellant's Contentions Summarized

Appellant founds this appeal upon an assignment of ten errors, summarized as follows:

(1) The CONTRACT of employment was MARITIME.

(2) The EMPLOYMENT was MARITIME.

(3) The employees' SERVICES were MARITIME.

(4) The INJURY to employees was MARITIME.

(5) The employer's BUSINESS was MARITIME.

(6) The STATE STATUTE (Compensation Act) may not be applied and the benefits therein given furnished the dependents of Brooke and Gregory, the deceased employees.

(7) ALL matters (including the rights and liabilities of employee, employer and employer's insurance carrier) were *exclusively* within the jurisdiction of the admiralty courts.

(8) The application of a state statute (the Compensation Act) violates section 2 of article III of the federal constitution.

(9) The jurisdiction of a STATE COURT (California Industrial Accident Commission) contravenes the *exclusive* jurisdiction of the admiralty courts in the case at bar.

(10) The AWARD of the California Commission contravenes the *exclusive* jurisdiction of the admiralty courts.

SUMMARIZED to the last analysis, appellant's contention is that the admiralty courts had *exclusive* jurisdiction because the contract was maritime, the employment was maritime, the services were maritime, the business was maritime and the casualty occurred upon navigable waters.

Noticeable by their absence among appellant's contentions are:

(1) Brooke's injury constituted a maritime tort;

(2) That the maritime law furnished any remedy specifically:

(a) Wages, maintenance and cure under the rule of *The Osceola*, 189 U. S. 158, in disability (not death) cases;

(b) Suit for damages;

(3) That the transportation of fishing patrons exclusively on the waters of Santa Monica Bay was interstate or foreign commerce.

(4) That article I, section 8, subdivision 3 of the federal constitution was violated.

B

Summary of Argument

REASONS WHY THE DECISION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA SHOULD BE AFFIRMED

A. The Controlling Principle Already Enunciated.

B. The Local Law May Govern With the Vessel in Its Home Port.

C. Why the *Jensen* Case Does Not Control.

D. The Effect of the Commerce Clause of the Constitution.

E. The Maritime Law Enlarged.

F. The New Principle of the *Strand* Case.

G. The Merchant Marine Act.

H. Admiralty Jurisdiction of Causes of Action.

a. Action *not* founded on maritime tort.
b. No tort proven.
c. No "maritime" tort.
d. Action founded on compensation statute.
e. Action on insurance contract.
f. Enforcement of state statute and insurance contract does not violate exclusive admiralty jurisdiction.

IV

ARGUMENT

Reasons Why the Decision of the Supreme Court of the State of California Should Be Affirmed

The BUSINESS of the employer was entirely INTRASTATE and the WORK of the deceased employees, Brooke and Gregory, was entirely LOCAL in character. There was no commerce or navigation of INTERSTATE or FOREIGN character, no port to port transportation, in fact, no departure from the one port of Santa Monica.

No rights and liabilities of persons engaged in interstate or foreign trade are here involved. The cause of action is nonmaritime.

The maritime law furnishes no remedy upon the facts found in the case at bar.

ONE FACT, the use of navigable waters in the employer's business, permits the admiralty court to assert jurisdiction IN GENERAL MARITIME cases. Opposing facts, the LOCAL character of the business and the nonmaritime character of the CAUSE OF ACTION, deprive the jurisdiction of the admiralty courts of its EXCLUSIVENESS.

A

The Controlling Principle Already Enunciated By This Court

The rule now is that the application of state workmen's compensation acts to maritime injuries or to injuries occurring upon navigable waters is forbidden only where the application of that statute would interfere with the characteristic harmony and uniformity of the maritime law in its interstate and international aspects.

> "It is now established that it is not merely the uniformity of the general maritime law which is essential but the uniformity of the general maritime law *in its interstate and international aspect* and that maritime injuries of a local significance may still be governed by the State Compensation Act." (Italics ours.)
>
> *Grant Smith-Porter Ship Co.* vs. *Rohde*, 257 U. S. 469.

And again:

> "*Under such circumstances* regulation of

rights, obligations, and consequent liabilities of the parties, as between themselves, by a local rule, *would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in* ITS INTERNATIONAL OR INTERSTATE RELATIONS." (Italics and capitalization ours.)

Grant Smith-Porter Ship Co. vs. *Rohde*, 257 U. S. 469.

This rule has been adhered to by this court in the following line of decisions:

Miller's Ind. Underwriters vs. *Braud*, 46 Sup Ct. 194;

Rosengrant vs. *Havard*, 47 Sup. Ct. 454;

Alaska Packers Assn. vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346;

Sultan Ry. Timber Co. vs. *Dept. of Labor, etc.*, 48 Sup. Ct. 505.

Eclipse Mill Co. vs. *Dept. of Labor, etc.*, 48 Sup. Ct. 505.

In the joint opinion on the last two cited cases this court said:

"It is settled by our decisions that, where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations, and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity * * *."

In the same two cases, Mr. Justice Brandeis, in his concurring opinion, also says:

> "* * * but in both the controlling principle is well settled, and *the question presented* is simply whether on the principal facts it is applicable * * *." (Italics ours.)

Under the facts found in the case at bar, even if this court, after consideration of our argument to the contrary, as hereinafter set forth, should hold that the admiralty courts did have jurisdiction, then, and in that event, the foregoing stated principle would still permit the assertion of jurisdiction by the Industrial Accident Commission of the State of California and the application of the provisions of the Workmen's Compensation Act of that state to the rights and liabilities of the parties to this proceeding. This principle is alone decisive of the question presented in this proceeding.

Petitioner's differentiation between seamen and other maritime workers engaged in work of a local character and argument that the rule of the *Rohde* case does not apply because Brooke was a seaman fails when this court's decision in *Alaska Packers Assn.* vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346, is called to mind. In that case, Peterson's contract of employment called for services as a seaman or fisherman. At the moment of his injury he was shoving his fishing boat off the beach, a fishing boat which he had navigated and which was capable of being used on a several days' cruise. This court held that such

service of a *seaman* was not "so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the *essential* uniformity of the general maritime law."

B

The Local Law May Govern With the Vessel in Its Home Port

The facts in the case at bar disclose that neither of the deceased employees, Brooke or Gregory, were even members of the crew of the drifting vessel "W. K.," which, together with the other three vessels, in condition to be operated, NEVER LEFT THE PORT OF SANTA MONICA in the course of the business of the employer.

With a vessel in its home port, it is the policy of the general maritime law to allow matters concerning it to be governed by the local law. *The maritime law is more largely interested in vessels to the extent that they are participating in interstate or foreign commerce or are voyaging.* It surrenders to the domestic law all regulation of matters concerned purely with the domestic or internal affairs of the vessel, and *the civil rights and duties* of its owner in his relation to individuals in the state of his own domicile.

The General Smith, 4 Wheat. 438;
The Lottawana, 21 Wall. (88 U. S.) 558.

These vessels were in their home port.

Application of the provisions of the Compensation

Act of California to the rights of these employees and the liabilities of this employer and to the contractual liabilities of the insurance carrier, appellant herein, under the circumstances found in the case at bar, has always been permitted by the admiralty courts.

C

Why the Jensen Decision Does Not Control

Appellant's argument, in substance, is based upon the decision of this court in the *Jensen* case, *Southern Pacific Co.* vs. *Jensen*, 244 U. S. 645, as followed by other decisions of this court in

Clyde S. S. Co. vs. *Walker*, 244 U. S. 255;
Peters vs. *Veasey*, 251 U. S. 121;
The Chelentis vs. *Luckenbach S. S.* Co., 247 U. S. 372;
Knickerbocker Ice Co. vs. *Stewart*, 253 U. S. 149;
Industrial Accident Com. vs. *James Rolph Co.*, 264 U. S. 219;
Robbins Drydock & Repair Co. vs. Dahl, 266 U. S. 449;
S. S. Bowdoin Co. vs. *Industrial Acc. Com.*, 246 U. S. 648.

As stated by this court in the *Jensen* case, *supra:*

"And plainly, we think no such *legislation* is valid if it contravenes the essential purpose expressed by an act of congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its *international and interstate* relations. If New York

can subject *foreign ships* coming into her ports to such obligations as those imposed by her compensation statute, other states may do likewise. The necessary consequences would be destruction of the very uniformity in respect to maritime matters which the constitution was designed to establish; and freedom of *navigation between the states* and with *foreign countries* would be *seriously hampered and impeded.*" (Italics ours.)

It clearly appears in the *Jensen* case that Jensen, working as a stevedore, was unloading A SHIP ENGAGED IN INTERSTATE AND FOREIGN COMMERCE. There was, therefore, a direct relation between Jensen's services and that class of commerce. Distinctively, in the case at bar, the ship was *not* engaged in interstate or foreign commerce.

Likewise, WITHOUT EXCEPTION, in every case cited by petitioner as adopting the rule in the *Jensen* case, the ship upon which the injury occurred was ENGAGED IN INTERSTATE OR FOREIGN TRADE.

By contrast, WITHOUT EXCEPTION, in every case following the rule in the *Rohde* case, the ship was NOT ENGAGED in interstate or foreign commerce.

This basic differentiation goes on *beyond mere coincidence* and must indicate the foundation of the distinction between *local* maritime matters under the state courts' concurrent jurisdiction and *purely* maritime matters under the admiralty courts' exclusive jurisdiction.

In *Clyde S. S. Co.* vs. *Walker,* 244 U. S. 255, Walker, a stevedore, was injured while unloading the Steamer "Cherokee," just arrived in New York Harbor from North Carolina.

In *S. S. Bowdoin Co.* vs. *Industrial Acc. Com.,* 246 U. S. 648, Sievers, a seaman, was injured on the deck of the Steamer "Bowdoin" at Port of Eureka, California. The steamer "Bowdoin" was engaged in interstate trade.

In *Peters* vs. *Veasey,* 251 U. S. 121, Veasey was injured while working as a stevedore unloading a cargo from the Steamer "Seria" at a dock in New Orleans. This vessel was "in trade."

In *Knickerbocker Ice Co.* vs. *Stewart,* 253 U. S. 149, Stewart was drowned when he fell from a barge. The only question was the effect of an act of congress amending sections 24 and 256 of the Judicial Code, approved October 6, 1917, C. 97, 40 Stat. 395. Unfortunately, it was stipulated that the employment was maritime.

> "* * * injuries received by one Stewart while engaged in helping unrig a derrick on one of the defendant's barges. *It is conceded* that the work in which the injured man was engaged was of a maritime nature and *upon that conceded fact* the argument is made. * * *" (Italics ours.)
>
> *Knickerbocker Ice Co.* vs. *Stewart,* 226 N. Y. 302, 303.

In both *Washington* vs. *Dawson & Co.* and *Industrial Acc. Com.* vs. *James Rolph Co.,* decided by this

court with joint opinion, 264 U. S. 219, this court affirmed its ruling in *Knickerbocker Ice Co.* vs. *Stewart, supra,* to the effect that that particular congressional act was unconstitutional. In both of these cases, however, the vessels were engaged in interstate trade and the question presented involved the services of stevedores in unloading the cargo from these ships.

In *T. Smith & Son* vs. *Taylor,* 276 U. S. 179, Taylor was injured on the dock in New Orleans and the compensation law of Louisiana was applied following the rule in the *Nordenholt* case. He was not injured on navigable waters.

Northern Coal & Dock Co. vs. *Strand,* 49 Sup. Ct. 88, the last case cited by appellant, will be more fully discussed hereafter.

In the case at bar, the vessels of the employer NEVER had engaged in interstate or foreign commerce or in port to port commerce. Stevedores were never required to work unloading the cargo of these vessels, for these vessels were not engaged in trade. The commerce in which the vessels in the case at bar were engaged was purely a local, intrastate, domestic commerce LOCAL to the city of Santa Monica. *It was not hooked to the terminal end of nor an integral part of any interstate or foreign commerce.*

The jurisdiction of the admiralty courts over maritime matters embraces many subjects.

> "*The principal subjects* of admiralty jurisdiction are maritime contracts and maritime torts,

including captures *jure belli,* and seizures on water for municipal and revenue forfeitures.

(1) Contracts, claims, or *service, purely maritime,* and touching rights and duties pertaining to commerce and navigation, are cognizable in the admiralty.

(2) Torts or injuries committed on navigable waters, of a civil nature, are also cognizable in the admiralty courts." (Italics ours.) *The Belfast,* 74 U. S. page 637.

The admiralty jurisdiction also extends to actions based upon violation of the old-time rules of the sea re passage, collision, salvage, pilotage and similar subjects.

It is pertinent to point out at this time that **NONE OF THE SUBJECTS** above enumerated are the basis of the cause of action in the case at bar.

Therefore, while the jurisdiction of the admiralty courts might be exclusive in its application to other subjects than the one involved in the case at bar, the peculiar nature of the present case, *i.e.,* its own facts and circumstances, do not invoke the exclusive jurisdiction of the admiralty courts.

D

Effect of the Commerce Clause of the Constitution

It is our contention that on *the facts* found herein, the admiralty courts had no jurisdiction of *the cause* tried in the courts below, notwithstanding Brooke was a seaman and his death occurred on navigable waters.

In conjunction with our argument supporting this contention, we ask this court to refer to Appendix "A," attached to this brief, for a better understanding of our concept of the meaning of the words "admiralty," "maritime," "commerce and navigation."

Federal *jurisdiction* over commerce and navigation rests upon two sources having one common authority:

1. The commerce clause of the federal constitution (article I, section 8, subdivision 3);

2. The jurisdiction of the federal courts in all cases of admiralty and maritime jurisdiction (article III, section 2);

The first source gives to *congress* the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

The second source in creating the *federal courts* and defining their judicial powers extends that judicial power "to all cases of admiralty and maritime jurisdiction."

Summed up, therefore, the control of the federal government over commerce and navigation is:

(1) The power of congress to regulate:
   a. interstate commerce, and
   b. foreign commerce.
   That power is cosqual over both forms of commerce.

(2) The jurisdiction of the federal courts over all cases of admiralty and maritime jurisdic-

tion. Not over "cases" of nonmaritime causes of action.

The exclusive jurisdiction of the admiralty courts in certain (admiralty and maritime) *cases* is exercised concurrently with the jurisdiction of the same courts as granted by congress (Judicial Code, sections 24 and 256) over all *civil causes* of admiralty and maritime jurisdiction.

> "The jurisdiction thus conferred embraces two classes of civil cases. The first respects acts and injuries done upon navigable waters. The second respects contracts purely maritime, and touching rights and duties pertaining to commerce and navigation."
>
> *Netherlands etc. Co.* vs. *Gallagher*, 282 Fed. 171, page 173.
>
> *The Belfast*, 74 U. S. 637.

Thus, the inherent power of the federal judiciary as granted it by the constitution (article III, section 2) over admiralty or maritime *cases* is strengthened, enlarged and rounded out by an act of congress functioning under its own constitutional grant of power. (Article I, section 8, subdivision 3.) The two grants of power, one constitutional, the other legislative, are exercised by the admiralty courts for a common purpose, *i.e.*, to secure, maintain and preserve uniformity in the regulation of interstate and foreign commerce and, thereby, harmony in that branch of our interstate and foreign relations. The two constitutional grants of power, one to the judiciary and the

other to congress, have thus merged in a common field and are to be viewed as each supplementing the other.

"The exclusive jurisdiction in admiralty cases was conferred on the national government as closely connected with the grant of the commercial power. It is a court instituted for the purpose of administering the law of the seas. There seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the granting of the commercial power, which would confine it, *in cases of contracts*, to those concerning the navigation and trade of the country upon the high seas and tide waters within foreign countries and among the several states." (Italics ours.)

New Jersey Steam Nav. Co. vs. *Merchants Bank*, 6 Howard, 392.

E

The Maritime Law Enlarged

Congress gave to workers engaged in transportation by rail (*i.e.*, on land) of interstate and foreign commerce certain rights and causes of action. [Federal Employers' Liability Act of 1908, chapter 149, 35 Stat. 65, and chapter 143, 36 Stat. 291 (45 U. S. C. A. sections 51-59).]

These were greater rights than those rights of maritime workers engaged in interstate and foreign trade. The injustice and inequality of this situation was largely corrected by the Jones Act (Sec. 33 of the Merchant Marine Act, approved June 5, 1920, 41

Stat. 1007), which incorporated into the "maritime law" by reference those rights enjoyed by workers on interstate carriers by rail.

Engle vs. *Davenport*, 271 U. S. 33, 35;
Panama R. Co. vs. *Johnson*, 264 U. S. 375.

F

THE NEW PRINCIPLE OF THE STRAND CASE

The recent decision of this court in the *Strand* case establishes a new rule even while adopting and following the principle enunciated by this court in *Southern Pacific Co.* vs. *Jensen*, 244 U. S. 205.

Prior to the decision in the *Jensen* case, *supra*, this court had always held that the maritime law furnished no remedy in a death case and the state law might apply.

The Harrisburg, 119 U. S. 199;
The Alaska, 130 U. S. 201;
American S. B. Co. vs. *Chase*, 16 Wall. 522;
The Hamilton, 207 U. S. 398.

The Jones Act having given a remedy in cases of death of maritime workers, the admiralty courts now have EXCLUSIVE jurisdiction in such cases of death to maritime workers where the casualty occurred on navigable waters. That is the NEW PRINCIPLE evolved by this court on November 23, 1928, in

Northern Coal & Dock Co. vs. *Strand*, 49 Sup. Ct. 88.

In this case, a stevedore was killed on board the

vessel while unloading *a vessel which had brought coal from other lake ports.* This was port to port commerce; it was more, IT WAS INTERSTATE COMMERCE.

> " * * * The vessel in which he was working at the time of his death was the steamer Matthew Andrews, which had brought a carload of coal from Toledo, Ohio, to Superior by way of the Great Lakes * * *."
>
> *Northern Coal & Dock Co.* vs. *Industrial Com.*, 213 N. W. 658-9.

In the *Strand* case, *supra*, this court recognized the difference between internal or local or domestic or intrastate commerce under the jurisdiction of the state law administered *exclusively* by the state law as contradistinguished from foreign and interstate or (as called in admiralty) maritime commerce under the maritime law administered *exclusively* by the admiralty courts in two ways:

(a) Reference to the rule of the *Rohde* case, *Grant Smith-Porter Ship Co.* vs. *Rohde;*

(b) Reference to the rule of *Panama R. Co.* vs. *Johnson*, and *New York Cent. R. Co.* vs. *Winfield.*

Analyzing those references we find:

(a) This court said on page 89:

> " * * * We have also held that state statutes providing compensation for employees through commissions might be treated as amending or modifying the maritime law in cases where they concern purely local matters and occasion no

interference with the uniformity of *such law in its international and interstate relations. Grant Smith-Porter Ship Co.* vs. *Rohde,* 257 U. S. 469 * * *.

The unloading of a ship is not matter of purely local concern. *It has direct relation to commerce and navigation,* and uniform rules in respect thereto are essential * * *." (Italics ours.)

Why did not the rule in the *Rohde* case control on the facts found in the *Strand* case? The business was a land business; it was local in character; the contract of employment primarily was a nonmaritime contract.

It did not apply because:

1. The services being rendered by Strand at the time of his injury were a DIRECT PART OF INTERSTATE COMMERCE.

2. Strand in rendering those services was a seaman engaged in that commerce called "maritime."

3. As a seaman engaged in interstate commerce, the maritime law *furnished a remedy.*

(b) The court said, referring to the *Johnson* and *Winfield* cases, *supra,* on page 89:

"*New York Central R. Co.* vs. *Winfield,* 244 U. S. 147, 151, * * * considered the effect of the Federal Employers' Liability Act * * * upon the former right of employees to recover under the laws of the states. * * *

We held 'the act is comprehensive and also exclusive,' and denied the right of an employee *of an interstate carrier* to recover under a state

statute even in respect of injuries suffered without fault as to which the federal act provides no remedy.

Panama R. Co. vs. *Johnson*, 264 U. S. 375, ruled that section 20, Act of March 4, 1915, as amended by the Merchant Marine Act, incorporated the Federal Employers' Liability Act into the maritime law of the United States." (Italics ours.)

Why and how did the principles of these two cases give the admiralty court in the *Strand* case a jurisdiction exclusive of that of the state courts? Because:

1. Regulation of interstate commerce by congress is exclusive;

2. The Merchant Marine Act incorporated the Federal Employers' Liability Act into the maritime law, bringing with it *exclusive jurisdiction of cases directly involving interstate commerce.*

3. The maritime law thereby furnished a remedy in deaths on navigable waters of seamen and stevedores *engaged in interstate commerce.*

G

The Merchant Marine Act

(a) But the Merchant Marine Act did not bring into the maritime law any rules applicable to domestic or local or interstate commerce. Court jurisdiction over this class of commerce was never relinquished by the states to the federal government through the federal constitution.

"The completely internal commerce of a state, then, may be considered as reserved for the state itself."

Newport, etc., Bridge Co. vs. *U. S.*, 105 U. S. 492.

"The states have as full control over their purely internal commerce as congress has over commerce among the several states and with foreign nations."

Mobile County vs. *Kimball*, 102 U. S. 699.

"The internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

Sands vs. *Manistee River Imp. Co.*, 123 U. S. 295.

"All commercial action within the limits of a state, and which does not extend to any other state or foreign country, is exclusively under state legislation. Congress has no more power to control this than a state has to regulate commerce 'with foreign nations and among the several states.'"

Passenger Cases, 7 How. 400.

See also:

Western Union Tel. Co. vs. *Texas*, 105 U. S. 466;
Groves vs. *Slaughter*, 15 Pet. 505;
Passenger Cases, 7 How. 399;
State Freight Tax Case, 15 Wall. 277;
U. S. vs. *E. C. Knight Co.*, 156 U. S. 12.

"Business done within this state can not be

made to mean business done between that state and other states."

Pacific Express Co. vs. *Seibert*, 142 U. S. 350.

"The power of congress, however, over the subject does not extend further than the regulation of commerce with foreign nations and among the several states. Beyond these limits the states have not surrendered their power over the subject, and may exercise it independently of any control or interference of the general government."

Sinnot vs. *Davenport*, 22 How. 243.

"(Congress) has nothing to do with the purely internal commerce as is carried on between different parts of the same state, if its operations are confined exclusively to the jurisdiction and territory of that state, and do not affect other nations or states or the Indian tribes."

Lord vs. *Goodall, etc., Steamship Co.*, 102 U. S. 543.

See also:

Pensacola Tel. Co. vs. *West, etc., Tel. Co.*, 96 U. S. 22;

Covington, etc., Bridge Co. vs. *Kentucky*, 154 U. S. 210;

Trade Mark Cases, 100 U. S. 96;

Stoutenburgh vs. *Hennick*, 129 U. S. 150;

Veazie vs. *Moor*, 14 How. 573;

U. S. vs. *E. C. Knight Co.*, 156 U. S. 32.

(b) The Merchant Marine Act did not enlarge the maritime law so as to furnish a remedy in death cases of seamen engaged in a domestic or local enterprise.

Neither the decision of this court in the *Strand*

case, *supra*, so holds, nor does any other decision by this court of which we are aware so hold. Nevertheless, it is a vital question in the case at bar and a question that the Industrial Accident Commission of California, as well as other state commissions, is repeatedly confronted with.

It may be that the rule enunciated by this court in the *Rohde* case was intended to cover this kind of a situation, but, so far as can be ascertained from the language of this court in the *Rohde* case and its sequent line of decisions, this court did not *specifically* say so. The determination of that question by this court in a written opinion would be of immeasurable help to all commissions and lower courts as well as to the litigants and their attorneys in future cases involving this same situation.

Justices Stone, Holmes and Brandeis in their concurring opinion in the *Strand* case, *supra*, impliedly hold that "workmen," other than seamen, killed on navigable waters would not have a remedy in the admiralty courts even though rendering services in connection with interstate commerce. They do not cite, but must have had in mind, *Rosengrant* vs. *Havard*, 47 Sup. Ct. 454.

To sum up:

(1) Under the Federal Employers' Liability Act, interstate workers have a remedy only in the federal courts, while intrastate workers have none under that act, but do find a remedy in the state courts;

(2) Under the maritime law *in death cases*, sea-

men in interstate commerce have a remedy *only* in the admiralty courts.

Where is the remedy for those seamen killed while engaged in domestic or intrastate commerce?

(3) Workmen (not seamen) performing services incidental to interstate commerce have a remedy in the state courts. *Rosengrant* vs. *Havard, supra.*

(4) While workmen (not seamen) engaged in intrastate commerce have a remedy only in the state courts and none in the admiralty.

H

Jurisdiction of Causes of Action

The jurisdiction of the admiralty courts over "cases" or causes of action is confined to "cases of admiralty or maritime jurisdiction."

The *cause of action* in the case at bar is one over which admiralty has no jurisdiction because:

(a) It is not founded on a maritime tort;

(1) Appellant has not so claimed in his assignment of errors on appeal to this court;

(2) The Supreme Court of California so found (R. 109).

"• • • Cases are cited to the proposition that admiralty jurisdiction in tort matters depend upon locality but that proposition is not involved here. The case is not one of tort. *Tort is neither alleged nor suggested.* • • •" (Italics ours.)

Ketchikan L. & S. Co. vs. *Bishop,* 24 Fed. (2d) 63.

"The action was not brought to recover damages for a tort, but solely for compensation under our statute." (R. 109.)

(b) There was no "tort" proven, maritime or otherwise, only a "casualty" that happened to occur on navigable waters.

No wilful or negligent act of commission or omission was shown, claimed or proven.

(c) There was no "maritime" tort.

The services of Brooke were rendered pursuant to a contract of employment involving domestic or intrastate commerce only.

"But in cases of this character, the locality of the injury is not the sole and exclusive test; the services to be performed must also be of maritime nature."

Grant Smith-Porter Ship Co. vs. *Rohde; Rosengrant* vs. *Havard,* 47 Sup. Ct. 454.

"In the cause now under consideration, the record discloses facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the State Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law. The act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist."

Miller's Ind. Underwriters vs. *Braud*, 257 U. S. 59.

(d) The *action* was founded on a compensation statute of California which regulated the rights of employees and the liability of employers, both being residents and citizens of the State of California.

"If the contract relates exclusively to the interior navigation and trade of a state, jurisdiction is disclaimed."

New Jersey Steam Nav. Co. vs. *Merchants Bank*, 6 How. 392.

"Where no remedy exists for an injury in the admiralty courts the fact that such courts exist and exercise jurisdiction in other causes of action leaves the state courts as free to exercise jurisdiction in respect to an injury not cognizable in the admiralty as if the admiralty courts were unknown to the constitution and had no existence in our jurisprudence."

American Steamboat Co. vs. *Chase*, 16 Wall. 530.

"The power of congress to regulate commerce is undoubtedly a beneficent one. The police laws of the state are equally so, and it is our duty to harmonize them."

Cook vs. *Marshall County*, 196 U. S. 273.

"The reserved power of the states to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce having no possible connection with those subjects."

Bowman vs. *Chicago, etc., R. Co.*, 125 U. S. 524.

"In conferring upon congress the regulation of commerce, it was never intended to cut the

states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in without constituting a regulation of it, within the meaning of the constitution."

Sherlock vs. *Alling*, 93 U. S. 99.

"* * * It may be said generally that the legislation of a state not directed against commerce or any of its regulations but relating to the rights and liabilities of citizens and only indirectly and remotely affecting the operations of commerce is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

Sherlock vs. *Alling*, 93 U. S. 103.

See also *Cooley* vs. *Port Wardens*, 12 How. 299, 320;

Pacific Mail S. S. Co. vs. *Joliffe*, 2 Wall. 450, 459;

Ex Parte McNeil, 13 Wall. 236, 241;

Wilson vs. *McNamee*, 102 U. S. 572;

Olson vs. *Smith*, 195 U. S. 332, 341;

Anderson vs. *Pacific Coast S. S. Co.*, 225 U. S. 187.

(e) Insurance is not commerce. Appellant was the insurance carrier of the employer. Its contract or policy of insurance through regulation by the Compensation Act of the State of California (section 30) necessarily contained a provision whereby appellant became "directly and primarily liable" to injured employees (seamen) of its insured if injured,

and to the dependents of these employees of its insured if such employees (including seamen) were killed in the course of their employment. This clause of the contract created a direct liability to the dependents of Brooke and Gregory when they were thus drowned in the course of their employment.

The dependents of both employees so killed filed their *action* with the Industrial Accident Commission of California and their claim against appellant *based on such contract* was established and a judgment or award thereon made in their favor.

It is from that award appellant seeks relief, i. e., relief from appellant's liability based on its own contract of insurance. In effect, therefore, in this appeal appellant contends that enforcement of the terms of that insurance contract by the state courts will violate the "exclusive" jurisdiction of the admiralty courts.

> "* * * Recovery in a state court upon an insurance policy upon the life of a seaman for death occurring on a ship on the high seas while in the performance of his duties would not, I suppose, be deemed to have that effect or be precluded by the admiralty law, even though some of the provisions of the policy were imposed by state statute."
>
> *Northern Coal & Dock Co.* vs. *Strand*, 49 Sup. Ct. 88, 90.

"The contention here is that, inasmuch as the contract was one for marine insurance, it was a matter of interstate commerce, and as such beyond the reach of state authority.

*** * * This proposition involves an erroneous conception of what constitutes interstate commerce. That the business of insurance does not generally appertain to such commerce has been settled since the case of *Paul vs. Virginia*, 8 Wall. 168."**

Hooper vs. *California*, 155 U. S. 653.

"If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude state control over many contracts purely domestic in their nature."

Hooper vs. *California*, 155 U. S. 655.

See also *Western Union Tel. Co.* vs. *James*, 162 U. S. 656.

(f) Enforcement of the state statute and the insurance contract by the State of California does not and can not:

(1) Conflict with any superior maritime law in death cases;

(2) Contravene any applicable act of congress;

(3) Disturb the uniformity of the maritime law;

(4) Interfere with the proper harmony of the maritime law in its international or interstate relations;

(5) Work prejudice to any characteristic feature of the maritime law.

It does furnish THE ONLY REMEDY under any law in any court to the dependents of the deceased employees, Brooke and Gregory.

V

ANSWERING APPELLANT'S ARGUMENT

Appellant has grouped its argument under five points which we answer in seriatim:

Point 1

Hereinabove, beginning on page 15, we have endeavored to show that the rule of the *Jensen* case does not control on the facts found in the case at bar.

Point 2

We submit that appellant has misconstrued our stated conception of the extent of admiralty jurisdiction as being limited to the scope of interstate and foreign commerce.

The jurisdiction of the admiralty courts fundamentally is a power to decide CASES. The admiralty courts do not have jurisdiction over maritime contracts, as such, but the courts' jurisdiction extends to CASES arising from or founded upon maritime contracts. Likewise the jurisdiction of the admiralty courts is not a jurisdiction of maritime torts but is a jurisdiction of CASES founded on maritime torts.

The jurisdiction of the admiralty courts is coequal in extent with the boundaries and application of the maritime law. The maritime law is the law of nations, intended to preserve harmony and uniform-

ity in commercial intercourse between nations. The maritime law as it stood at the time of its recognition by the federal constitution and adoption into the law of this country as administered by the admiralty courts constituted an unwritten code of the usages of the sea, particularly as to rules of passage, liability in the event of collision, salvage, pilotage and similar subjects. The maritime rules controlling these subjects were the foundation upon which the harmony and uniformity of commercial intercourse might be preserved.

In the case at bar the maritime law unquestionably reached to the vessels of the employer, appellant's insured, in their use of the navigable waters of Santa Monica Bay.

If the case now before this court were an action founded upon a collision between one of these vessels and other vessels, it would be subject to the maritime rules of the sea and the cause of action would lie exclusively within the jurisdiction of the admiralty court, but *that subject is not the subject* upon which the present case or cause of action is founded. The present cause of action is not based upon the contract of employment primarily, it is not based upon such contract at all but is predicated upon the *status* of employer and employee residents of this state.

Cudahy Packing Co. vs. *Parramore*, 263 U. S. 418;

North Alaska Salmon Co. vs. *Pillsbury*, 174 Cal. 1;

Quong Ham Wah vs. *Industrial Acc. Com.*, 184 Cal. 26;
Alaska Packers Assn. vs. *Industrial Acc. Com.*, 200 Cal. 579.

The present action is not founded on tort.

The parties to the present action were not performing services that had any incidental relation, let alone a direct contact, with interstate and foreign commerce.

Thus, while we concede that the admiralty court would have jurisdiction over the vessels of appellant's assured in the case at bar, over contracts made in connection therewith, the very torts committed thereby or thereon, over a collision occurring to and between such vessels and such other similar subjects, we respectfully maintain that *that jurisdiction of the admiralty courts is not EXCLUSIVE* unless it be shown that a cause of action was founded upon the use of those ships either directly in or as an incidental part of or as in contact with interstate and foreign commerce.

Lacking the interstate and foreign character of either commerce or business, then the local law might apply concurrently without disturbing the harmony or interfering with the uniformity of the maritime law in its interstate and international relations.

We do not deny that the jurisdiction of the admiralty courts extends to navigable waters, whether wholly intrastate or otherwise, if connected to the open sea, thereby serving as a channel over

which interstate and foreign commerce may be carried, but we do not concede that such jurisdiction is exclusive in all kinds of cases arising thereon. In matters of local concern and lacking interstate and foreign character, and particularly cases arising therefrom, the jurisdiction of the admiralty courts is not exclusive, as was decided by this court in the *Rohde* case, *supra*, with its subsequent line of decisions. On cases arising out of the navigation of vessels, such as collision, etc., the admiralty jurisdiction might be exclusive.

POINT 3

THESE VESSELS NEVER

1. WENT TO ANY OTHER PORT;
2. LEFT SANTA MONICA BAY;
3. LEFT THE BOUNDARIES OF THE STATE OF CALIFORNIA.

In the first paragraph of page 24 of Appellant's brief, Appellant says:

> "* * * These voyages over three miles out were all beyond the territorial jurisdiction of the State of California," citing
>
> "California Constitution, Article XXI, Section 1,"

and then counsel refers to Appendix to his brief, quoting Article XXI, Section 1 of the Constitution of the State of California (page 35 of the brief).

Counsel apparently overlooked the effect of the last sentence of that section which defines the boun-

daries of the State of California, for in that last sentence we find this language:

> "also, including all the islands, harbors, and *bays along* and adjacent to *the coast.*" (Italics ours.)

Santa Monica Bay is, therefore, included within the boundaries of the State of California according to the description by Clifford A. Morris (R. 43). Captain Morris fixes the line drawn between Point Firmin and Point Duma as the outside line of Santa Monica Bay and this line is "ten miles approximately, from the Santa Monica Pier." Captain Morris also said, "but they never run outside."

Counsel's quotation of Section 1 of Article XXI of the California constitution refutes his argument that these vessels ever left the territorial jurisdiction of the State of California.

The weakness of the maritime character of these boats is demonstrated by appellant's statement that Brooke "at times * * * had actual charge of a boat." Brooke was not a licensed skipper. He was not even twenty-one years of age. A license had been refused him. Yet he is permitted to have "actual charge" of a boat. These vessels, in effect, were nothing but OVERSIZED ROW BOATS used for fishing.

We can not feel that this was a maritime business which lay within the *exclusive* jurisdiction of the admiralty courts, whose assertion of exclusive jurisdiction was essential to preserve the harmony and

uniformity of the maritime law or of any of its essential characteristics.

Point 4

As one of the "facts and circumstances" of this case, it is again pointed out to this court that Brooke was not a member of the crew of the "W.K." at the time of his injury; that the "W.K." was deserted at the time of Brooke's drowning and death. These facts are not decisive of the issue presented in the case at bar, but are pointed out to this court merely as a part of the whole, i.e., all the facts and circumstances of this case.

As pointed out in our Argument hereinabove, the fact that Brooke met his death on navigable waters, i.e., locality, is not alone decisive to indicate and fix the *exclusive* jurisdiction of the federal courts.

Point 5

Appellant states "A state compensation act can not be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction."

The answer to this statement is found in the opinion of this court in *Alaska Packers Assn.* vs. *Industrial Acc. Com.*, 48 Sup. Ct. 346. In that case, Peter-

son was a seaman or fisherman under his contract of employment. Yet the work that he was engaged in at the time of his injury was of such a local character that the provisions of the Compensation Act were permitted to apply by this court as not affecting or impinging upon the admiralty jurisdiction.

The case of *S. S. Bowdoin Co.* vs. *Industrial Acc. Com.*, 246 U. S. 648 (a California case) is not decisive, for in that case the injured man, Sievers, was a member of the crew of a vessel engaged in interstate trade, thus distinguishing it from the facts in the case at bar. The contrast between that case and the case at bar marks the difference between the application of the rule of the *Jensen* case and the application of the rule in the *Rohde* case.

In a recent decision, *a seaman* was held entitled to the benefits of the Compensation Act even though killed on navigable waters. In

S. S. Catala vs. *Dagsland*, (B. C. D. 928) 3 D. L. R. 334,

the deceased employee was working on a fishing boat. In a collision of the "S. S. Catala" the employee was killed. The Exchequer Court of Canada held there was no jurisdiction in such court on its admiralty side to entertain an action for damages for loss of life. Any right of action for damages under the circumstances could only be maintained by virtue of the Workmen's Compensation Act of British Columbia.

RIGHTS and REMEDIES have a definite distinction. The law confers *rights*. The maritime law confers one class of rights. The Workmen's Compensation Act of California confers another class of rights. We emphasize, the *rights* conferred by these two separate laws are DISTINCT each from the other.

REMEDIES are necessary to the enforcement of rights. In enforcement, the remedy lies through a *cause of action or case*. The admiralty courts have jurisdiction of *cases* wherein the rights conferred by the maritime law are to be enforced. The REMEDY for a maritime right lies in the admiralty courts' jurisdiction. The state courts, on the contrary, have jurisdiction only over cases wherein the enforcement of rights conferred by the state statutes (Workmen's Compensation Act) is sought.

The *remedy* for rights given by the State Compensation Act can only be sought through that quasi-judicial body, the Industrial Accident Commission of the State of California, appellee herein.

Summed up, the *rights* of the maritime law and of the State Compensation Act are not in conflict, even though pertaining to and conferred upon a *seaman*. Likewise, the *remedies* on the facts found in the case at bar, pursued by a seaman before the Industrial Accident Commission, appellee herein, does not violate the exclusive jurisdiction of the admiralty courts.

The right enforced by the state courts in the case at bar was an award for FUNERAL EXPENSES in the sum of $150. The maritime law grants no

such right either to seamen, to dependents of seamen, or to other persons providing to deceased seamen that service. The admiralty courts have no jurisdiction to enforce that or any such right.

VI

CONCLUSION

There has been no violation of or impinging upon the EXCLUSIVE jurisdiction of the Admiralty courts by either the application of the Compensation Act of the State of California or the decision of the Supreme Court of the State of California under the circumstances and facts found in the case at bar.

There being no taint of interstate or foreign commerce, no port to port transportation or navigation, no hooking to the end of any interstate carrier in the little, local, concession, pleasure business carried on by the Morris Pleasure Fishing, Inc., at Santa Monica, California, confined entirely to the use of the waters of Santa Monica Bay, the rule of the *Rohde* case controls, there being no

1. contravening of the essential purpose expressed by any act of Congress, or
2. working of material prejudice to the characteristic or any characteristic features of the general maritime law in its interstate or international relations, or
3. interfering with the proper harmony and uniformity of that law in its international and interstate relations.

On the contrary, the case is that of a casualty, maritime in character only because it occurs on navigable waters and occurs to a seaman engaged in domestic or local commerce of limited extent and, therefore, constitutes a matter "of a local signifi-

cance" which "may still be governed by the State Compensation Act."

The regulation of the rights and liabilities of the parties to this controversy by the State Compensation Act and adjudication of those rights and liabilities, clearly not maritime in character, does not constitute that kind of a case which lies within the *exclusive* jurisdiction of the Admiralty courts.

Respectfully submitted that the decision of the Supreme Court of the State of California should be affirmed.

G. C. FAULKNER,
Attorney for Appellee, Industrial Accident Commission of the State of California.

APPENDIX "A"

Admiralty and Admiralty Courts Defined

"What is Admiralty? It is the law, not of the water, but of the seas."

The Robert W. Parsons, 191 U. S. 48.

"The dominion of the Admiralty was over the sea—the ships and the men who frequented it—their contracts and their torts."

Ward vs. *Chamberlain*, 2 Black 446.

"It" (Admiralty) "grew up out of the fact that the ocean is not the territorial property of any nation, but the common property of all; that the vessels engaged in *commerce between the different nations* ought, so far as possible, to be subject to a uniform law, and not annoyed by the conflicting local laws and customs of the several nations which they visit." (Italics ours.)

The Robert W. Parsons, 191 U. S. 48.

"The Admiralty and maritime jurisdiction, like the common law or chancery jurisdiction, embraces a system of procedure known and established for ages. *It may be called a system of regulations* embodied and matured *by the* most enlightened and *commercial nations of the world.*" (Italics ours.)

Jackson vs. *The Steamboat Magnolia*, 20 Howard 303.

"The exclusive jurisdiction in Admiralty cases was conferred on the national government as closely connected with the grant of the commercial power. It is a court instituted for the purpose of administering the law of the seas. There

seems to be ground, therefore, for restraining its jurisdiction, in some measure, within the limit of the granting of the commercial power, which would confine it, *in cases of contracts,* to those concerning the navigation and trade of the country upon the high seas and tide waters *within foreign countries and among the several states.*" (Italics ours.)

New Jersey Steam Nav. Co. vs. *Merchants Bank,* 6 Howard 392.

"The best guides as to the extent of the admiralty jurisdiction of the federal courts are the constitution of the United States, the laws of Congress, and the decisions of this court."

The Belfast, 7 Wall. 636.

MARITIME

There is a definite distinction between the word "maritime" and the word "marine" though both are used freely in matters pertaining to the sea.

"The same transaction may be maritime in one case and not maritime in another."

Hughes on Admiralty, (2d ed.) page 22.

Maritime law is defined.

"* * * The law of nations and the law of maritime commerce, the maritime law * * * in no manner and a uniform administration of that great branch of the law of nations, known as the general maritime law, be secured except by the transfer of all the cases of admiralty and martime jurisdiction to the congnizance of the national judiciary and by committing to Congress the

authority to make all laws necessary and proper to carry into execution the power so vested, as by altering and amending the maritime law under which such cases are adjudged. * * * State legislation, * * * is not framed to display the characteristic features of the maritime law or to impair that uniformity which in international and interstate relations the constitution designed to establish in conferring the maritime power upon the United States."

(*Benedict on Admiralty*, Vol. 1, page 13.)

"'Maritime' means pertaining to the sea or ocean, or the navigation thereof; or to commerce conducted by navigation of the sea or (in America) of the Great Lakes and rivers."

Black Law Dictionary.

"It is not easy to get an exact definition of the term 'maritime contract.' It is far easier to say what is not a maritime contract * * *."

Doolittle vs. *Gnobelach*, 39 Fed. 40.

"The contract for constructing 'The Ahala' was nonmaritime, and although the incompleted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment, nor his activities at the time had any direct relation to navigation or commerce. *Thames Towboat Co.* vs. *The Schooner 'Francis McDonald,'* 254 U. S. 242."

Grant Smith-Porter Co. vs. *Rohde*, 257 U. S. 469.

The word "maritime" has never been clearly and succinctly defined. Its use is somewhat hazy (and

nebulous). We do find in the opinions of the courts the words "essentially" and "wholly" and "entirely" as a prefix to the word "maritime" and descriptive of the degree to which, services, employments, contracts or torts and like matters may be "maritime," and where such words are used, invariably the case is one where the trade, commerce, or transportation involved is interstate or foreign. On the contrary, where the trade, commerce or transportation are "local" or "intrastate" or "domestic," the court holds, the services or liens or contracts or torts and like matters to be "nonmaritime" or so little "maritime" in character as to not be within the "exclusive" admiralty jurisdiction.

> "To give the court jurisdiction over a contract as "maritime" it must relate to the trade or business of the sea, or must be *essentially* maritime in its character."
>
> *The Mary F. Chisholm*, 129 Fed. 814, 817.

COMMERCE (AND NAVIGATION)

Commerce embraces and includes navigation:

> "It is well-settled law that the word 'commerce' as used in the constitution comprehends navigation, which extends to every species of commercial intercourse between the United States and foreign nations, and to all commerce in the several states, except such as is completely internal, and which does not extend to or affect the other states."
>
> *Hall* vs. *DeCuir*, 95 U. S. 491.

> "It is well-settled law that the word commerce, as used in the constitution, comprehends naviga-

tion and that it extends to every species of commercial intercourse between the United States and foreign nations and to all commerce in the several states, except such as is completely internal and which does not extend to or affect other states."

State Tonnage Tax Cases, 12 Wall. 214.

See also

Gilman vs. *Philadelphia,* 3 Wall. 724.

"If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels, or requiring that they shall be navigated by American seamen."

Gibbons vs. *Ogden,* 9 Wheat. 190.

What is commerce:

"Transporting commodities is commerce, * * * Both trade and commerce are included so long as each relates to that which is interstate or foreign."

U. S. vs. *Trans-Missouri Freight Assoc.,* 166 U. S. 325.

"Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

Gibbons vs. *Ogden,* 9 Wheat. 190.

" 'Commerce among the states,' as defined by this court, is 'trade,' 'traffic,' 'intercourse,' and

dealing in articles of commerce between states, by its citizens or others, and carried on in more than one state."

Groves vs. *Slaughter*, 15 Pet. 511.

See also

Lottery Case, 188 U. S. 352.

Commerce divided into two classes. 1. Interstate or foreign. 2. Local or intrastate or domestic. They are distinguished thus:

"Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately, or at some stage of their progress, must be extraterritorial. The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community."

Veazie vs. *Moor*, 14 How. 573.

"There is a trade among the several states which is distinct from that carried on within the territorial limits of a state. The regulation and control of the former is committed by the national constitution to congress."

U. S. vs. *E. C. Knight Co.*, 156 U. S. 32.

"It has been repeatedly held that there is a commerce entirely within a state, among its own citizens, which congress has no power to regulate."

Stoutenburgh vs. *Hennick*, 129 U. S. 150.

"The power of congress, however, over the subject does not extend further than the regulation of commerce with foreign nations and among the several states. Beyond these limits the states have not surrendered their power over the subject, and may exercise it independently of any control or interference of the general government."

Sinnot vs. *Davenport*, 22 How. 243.

"The power given to congress to regulate commerce with foreign nations, and among the states, has been deemed exclusive, from the nature and objects of the power, and the necessary implications growing out of its exercise."

New York vs. *Miln*, 11 Pet. 158.

See also

Groves vs. *Slaughter*, 15 Pet. 505;
Maine vs. *Grand Trunk R. R. Co.*, 142 U. S 233;
Hall vs. *DeCuir*, 95 U. S. 487;
Hennington vs. *Georgia*, 163 U. S. 318.

Purpose of commerce clauses of constitution:

"The commerce clauses of the constitution had their origin in a wise and salutary policy. They give to congress the entire control of the foreign and interstate commerce of the country. They were intended to secure harmony and uniformity in the regulations by which they should be governed. Wherever such commerce goes, the power of the nation accompanies it, ready and competent, as far as possible, to promote its prosperity and redress the wrongs and evils to which it may be subjected."

Inman Steamship Co. vs. *Tinker*, 94 U. S. 245.

"The doctrine now firmly established is, that where the subject upon which congress can act under its commercial power is *local* in its nature or sphere of operation, such as harbor pilotage, the improvement of harbors, the establishment of beacons and buoys to guide vessels in and out of port, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, and the like, which can be properly regulated only by special provisions adapted to their localities, the state can act until congress interferes and supersedes its authority; but where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the states, such as transportation between the states, including the importation of goods from one state into another, congress can alone act upon it and provide the needed regulations."

Bowman vs. *Chicago, Etc., R. Co.*, 125 U. S. 507.

Local, or internal, or domestic, or intrastate commerce:

"The states have as full control over their purely internal commerce as congress has over commerce among the several states and with foreign nations."

Mobile County vs. *Kimball*, 102 U. S. 699.

"The internal commerce of a state—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the general government."

Sands vs. *Manistee River Imp. Co.*, 123 U. S. 295.

"All commercial action within the limits of a state, and which does not extend to any other state or foreign country, is exclusively under state legislation. Congress has no more power to control this than a state has to regulate commerce 'with foreign nations and among the several states'."

Passenger Cases, 7 How. 400.

"'Comprehensive,' says Mr. Chief Justice Marshall, 'as the word "among" is, it may be very properly restricted to that commerce which concerns more states than one,' and 'the completely internal commerce of a state, then, may be considered as reserved for the state itself.'"

Newport, Etc., Bridge Co. vs. *U. S.*, 105 U. S. 492.

"(Congress) has nothing to do with the purely internal commerce as is carried on between different parts of the same state, if its operations are confined exclusively to the jurisdiction and territory of that state, and do not affect other nations or states or the Indian tribes."

Lord vs. *Goodall, Etc., Steamship Co.*, 102 U. S. 543.

"Business done within this state can not be made to mean business done between that state and other states."

Pacific Express Co. vs. *Seibert*, 142 U. S. 350.

See also

Pensacola Tel. Co. vs. *West, Etc., Tel. Co.*, 96 U. S. 22;
State Freight Tax Case, 15 Wall. 277;
Passenger Cases, 7 How. 399.

State police laws valid:

"The power of congress to regulate commerce is undoubtedly a beneficent one. The police laws of the state are equally so, and it is our duty to harmonize them."

Cook vs. *Marshall County*, 196 U. S. 273.

"The reserved power of the states to guard the health, morals, and safety of their people is more vital to the existence of society than their power in respect to trade and commerce having no possible connection with those subjects."

Bowman vs. *Chicago, Etc., R. Co.*, 125 U. S. 524.

"A state regulates its own internal commerce, may pass inspection and police laws, designed to guard the health and protect the rights of its citizens."

Groves vs. *Slaughter*, 15 Pet. 505.

"It is well settled that the state may make valid enactments in the exercise of its legislative power to promote the welfare and convenience of its citizens, although in their operation they may have an effect upon interstate traffic."

Pennsylvania R. Co. vs. *Hughes*, 191 U. S. 488.

"That which belongs to commerce is within the jurisdiction of the United States, but that which

does not belong to commerce is within the jurisdiction of the police power of the state."

U. S. vs. *E. C. Knight Co.*, 156 U. S. 12.

Insurance is not commerce:

"The contention here is that, inasmuch as the contract was one for marine insurance, it was a matter of interstate commerce, and as such beyond the reach of state authority.

* * * This proposition involves an erroneous conception of what constitutes interstate commerce. That the business of insurance does not generally appertain to such commerce has been settled since the case of *Paul* vs. *Virginia*, 8 Wall. 168."

Hooper vs. *California*, 155 U. S. 653.

"If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states; and would exclude state control over many contracts purely domestic in their nature."

Hooper vs. *California*, 155 U. S. 655.

"Where the power of congress to regulate is *exclusive* the failure of congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of *local concern* only, as hereafter mentioned, is repugnant to such freedom."

Robbins vs. *Shelby Taxing Dist.*, 120 U. S. 493.

Regulation of commerce embraces ships and seamen:

"The power of congress to require vessels to be enrolled and licensed is derived from the provision of the constitution which authorized it 'to regulate commerce with foreign nations and among the several states'."

Wiggins Ferry Co. vs. *East St. Louis*, 107 U. S. 377.

"If congress license vessels to sail from one port to another, in the same state, the act is supposed to be necessarily incidental to the power expressly granted to congress, and implies no claim of a direct power to regulate the purely internal commerce of a state, or to act directly on its system of police."

Gibbons vs. *Ogden*, 9 Wheat. 204.

"Unquestionably the power to regulate commerce includes navigation as well as traffic in its ordinary signification, and embraces ships and vessels as the instruments of intercourse and trade as well as the officers and seamen employed in their navigation."

State Tonnage Tax Cases, 12 Wall. 216.

"Repeated decisions of this court have determined that the power to regulate commerce embraces all the instruments by which such commerce may be conducted; and it is settled law that where the subject to which the power applies is national in its character, or of such a nature as

to admit of uniformity of regulation, the power is exclusive of all state authority."

Hall vs. *DeCuir*, 95 U. S. 497.

See also

License Cases, 5 How. 578.

SUPREME COURT OF THE UNITED STATES.

No. 491.—October Term, 1928.

London Guarantee and Accident Company, Ltd., Appellant,
vs.
Industrial Accident Commission of the State of California, Sarah Jane Brooke and John Arthur Brooke.

Appeal from the Supreme Court of the State of California.

[April 8, 1929.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This proceeding was begun by a petition to the Industrial Accident Commission of California to obtain an award for the death of John James Uttley Brooke, an unmarried minor nineteen years of age, who was drowned in Santa Monica Bay on April 8, 1926, while in the service of the Morris Pleasure Fishing, Inc. The appellant was the insurance carrier of the employer, and the question presented in this appeal is whether the case was for the exclusive cognizance of a court of admiralty under Section 256 of the Judicial Code, or might be brought within the purview of the Workmen's Compensation Act of California.

The petition was filed by the mother and the stepfather of the deceased before the Commission, which on October 6th, 1926, made its findings and held that he was not at the time of his death engaged in maritime employment, and that both he and his employer were subject to the provisions of the Compensation Act. The Commission found that neither the mother nor the stepfather was dependent on him, and accordingly that the award should be limited to the reasonable expenses of burial fixed at $150.

There was a proceeding in certiorari in the District Court of Appeal, Second Appellate District, Division Two, to review the award of the Commission. The District Court of Appeal found that the Workmen's Compensation Act of California did not give

jurisdiction of this cause and annulled the award. 256 Pac. 857. The Supreme Court of the State reversed the District Court of Appeal and affirmed the award of the Industrial Accident Commission. 265 Pac. 825. An appeal to this Court was then allowed.

The facts as shown before the Commission and as stated by the District Court of Appeal were as follows:

"The Morris Pleasure Fishing, Inc., is a corporation which carries on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels for the accommodation of the public seeking recreation in deep-sea fishing. In the fishing seasons its practice has been to have excursions daily from Santa Monica Bay to the ocean fishing grounds, a distance of three to five miles, with fixed charges both for half-day and full-day trips. For use in this business the company has several vessels, ranging from four to fourteen tons registry, equipped with gas engines and capable of cruising a distance of 500 miles. The business has been confined entirely to the maintenance of these pleasure-fishing vessels and the transportation of patrons to and fro by water, except that excursionists have also been supplied with bait. As one of the necessary incidents of its business the company employs seamen to navigate its vessels; and before and at the time of the accident which occasioned Brooke's death, he was in the company's employ as an apprentice navigator and seaman. In that capacity he made daily trips as required with the company's vessels, and at times was substituted as 'spare skipper' for one of the regular skippers. On April 8, 1926, one of the company's fishing vessels called 'W. K.', of about seven tons registry, was moored, with no one aboard, in Santa Monica Bay about three-quarters of a mile to a mile from the pier. A storm having arisen, the vessel broke from her moorings early in the afternoon and began to drift toward the shore. In an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employe, named Gregory, put off from the pier with the captain himself, in a boat about eighteen feet long, with the purpose in mind of boarding the 'W. K.' and returning her to her anchorage. But as they neared the drifting vessel, their boat was capsized by a heavy wave and all three were drowned."

The appellant contends that under Section 256 of the Judicial Code this is a cause of action in admiralty, enforceable in a court of admiralty, or at common law if the latter affords a remedy, and is not a matter of which cognizance may be had under a State workmen's compensation act.

The Commission contends that the matter is one of local concern which does not affect commerce or navigation and of which the Commission is not deprived of jurisdiction.

Section 256 of the Judicial Code provides that jurisdiction vested in the courts of the United States in all civil causes of admiralty and maritime jurisdiction shall be exclusive of the courts of the several States, saving, however, to suitors in all cases the right of a common law remedy where the common law is competent to give it.

In *Southern Pacific Company* v. *Jensen*, 244 U. S. 205, where a stevedore engaged in unloading a ship in navigable waters in New York was killed, and an award of compensation was made against the ship owner under the State workmen's compensation act, it was held that that remedy provided for compensation under a prescribed scale for injuries and deaths of employes without regard to fault, and being administered through a State administrative commission, was a remedy unknown to the common law and incapable of enforcement by the ordinary processes of any court, and hence was not among the common law remedies saved to suitors under Section 256, and therefore such a remedy was contrary to the Constitution and laws of the United States. The same principle was followed in *Clyde Steamship Company* v. *Walker*, 244 U. S. 255.

In *Knickerbocker Ice Company* v. *Stewart*, 253 U. S. 149, it was held that an addition to the saving clause of Section 256, by which rights and remedies under the workmen's compensation law of any State were given to claimants thereunder, was unconstitutional as being a delegation of legislative power to States and a defeat of the purpose of the Constitution in preserving the harmony and uniformity of maritime law.

In *Union Fish Company* v. *Erickson*, 248 U. S. 308, it was held that a maritime contract of employment was not affected by the California statute of frauds requiring such an agreement where not to be performed within a year to be in writing, and that such a contract was not subject to State limitation, because such limitation would materially prejudice the characteristically uniform features of the general maritime law.

The same principle was applied in *State of Washington* v. *W. C. Dawson & Company*, 264 U. S. 209, where it was sought to compel an employer of stevedores to contribute to an accident fund

created by the workmen's compensation act of the State. Under the same title, it was held on the same principle that workmen's compensation under a State statute could not be awarded for the death of a workman killed while engaged at maritime work under a maritime contract upon a vessel moored on navigable waters and discharging her cargo.

In *Robins Dry Dock Co.* v. *Dahl*, 266 U. S. 449, the same principle was recognized and enforced in a case of maritime tort suffered by one doing repair work on board a completed vessel. The case was reversed, on the ground that the liability of the employer in such a suit could not be affected by the provision of a State law regulating the duties of employers generally to furnish safe scaffolds.

Another class of cases is illustrated by *Western Fuel Co.* v. *Garcia*, 257 U. S. 233. There a stevedore was killed while at work in the hold of a vessel under charter to the Fuel Company. The Workmen's Compensation Commission granted an award to the widow and children. This was annulled by the State court, and then the widow and children brought a suit in admiralty against the Fuel Company in the District Court of the United States, alleging death by negligence, and prayed for damages. The District Court was held to have jurisdiction in admiralty under *La Bourgogne*, 210 U. S. 95; *American Steamboat Co.* v. *Chase*, 16 Wall. 531; *The Hamilton*, 207 U. S. 398. The plaintiff was defeated in the admiralty suit by application of the State statute of limitations. This Court thus recognized a well established exception to the non-application of State statutes to admiralty jurisdiction, which is when they give a common law remedy for death by wrongful act. But this Court in the *Knickerbocker Ice Co.* case decided that it could not extend the saving clause of Section 256 to include an award under a State workmen's compensation act. Such cases as the *Garcia* case, *supra*, *Northern Coal Co.* v. *Strand*, 278 U. S. 142, and *Great Lakes Dock Co.* v. *Kierejewski*, 261 U. S. 479, are therefore hardly to be regarded as real exceptions to the exclusive jurisdiction of admiralty by Section 256.

Other cases however are cited to sustain the State jurisdiction in this case. The first and chief one is *Grant Smith-Porter Company* v. *Rohde*, 257 U. S. 469. That was a proceeding to recover an award under a workmen's compensation act from a ship builder *for*

injuries which a carpenter received while he was working on an unfinished vessel moored in the Willamette River. The contract for constructing the vessel was non-maritime, and although the uncompleted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment nor his activities at the time had any direct relation to navigation. It was held to be a matter of merely local concern in view of the fact that recognition of the rights and liabilities of the parties under a contract between them, had been made by their consent to the local statute, that they had not consciously contracted in view of admiralty, and such an exception would not injure any characteristic feature of the general maritime law or the harmony or uniformity of that law in its international and State relations.

In *Miller's Indemnity Underwriters* v. *Braud*, 270 U. S. 59, the plaintiff's intestate was employed as a diver by a ship building company. He submerged himself from a floating barge anchored in a navigable river 35 feet from the bank, in order to saw off some timbers of an abandoned set of ways once used for launching ships which had become an obstruction to navigation. He died from suffocation for lack of air supply during his work. His representative was allowed to recover from the employer's insurer under the Texas Workmen's Compensation Law. The facts disclosed a possible maritime tort to which the general admiralty jurisdiction might extend except that the State compensation law prescribed an exclusive remedy. The State statute was allowed to have effect. It was thought that enforcing such a State statute would not tend to destroy the characteristic features of maritime law.

In *Alaska Packers' Association* v. *Industrial Accident Commission*, 276 U. S. 467, a person engaged by a fishing and canning company as a seaman, also as a fisherman, and then for general work in and about a cannery, was injured after the fishing season was over while standing upon the shore and endeavoring to push a stranded fishing boat into navigable waters for the purpose of floating it to a nearby dock, where it was to be lifted out and stored for the winter. It was held that the injury even if within admiralty jurisdiction was of such a local character as to be cognizable under a State compensation law, a ruling which would not injure the characteristic features or uniformity of the admiralty law.

In *Sultan Railway Co.* v. *Department of Labor and Industries of the State of Washington*, 277 U. S. 135, an award for injuries under the Workmen's Compensation Law of Washington was sustained. The plaintiff was engaged in assembling saw logs in booms for towage elsewhere for sale, and the breaking up of the booms which had been towed on a river to a saw mill and the guiding of the logs to a conveyor extending into the river by which they were drawn into the mill for sawing. Clearly even if this had any admiralty feature, it had only an incidental relation to navigation. The rights and obligations of the employees and their employers could well be regulated by local rules which would not work material prejudice to the characteristic features of the general maritime law.

Nothing in these cases could apply to the case before us. They may be said to be of an amphibious character. They have an admiralty feature about them in the locality where they occurred, although even this is doubtful with respect to the *Alaska* case. But the contract in the *Rohde* case was non-maritime, the ship was incomplete, and being completed under a non-maritime contract, both parties had made a non-maritime contract with reference to their liabilities and not in contemplation of the admiralty law. The *Broud* case was one of a maritime tort. But it had no characteristic feature of the general maritime law except locality, and it was very like in its relation to the State law to the *Rohde* case. The employment was not maritime, and the transaction and the circumstances thus seemed to have but one characteristic that was maritime. This was true of the *Sultan Company* case.

Other cases cited but which seem to have no application here rest on the undisputed circumstance of locality in fixing or excluding admiralty jurisdiction.

In *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 263, the tort complained of was committed upon a dock which was an extension of the land, and was not within the jurisdiction in admiralty at all.

Smith & Son v. *Taylor*, 276 U. S. 179, was a case in which a longshoreman was struck by a sling while working on a stage resting solely upon a wharf and projecting a few feet over the water to or near a vessel. He was knocked into the water where sometime later he was found dead. It was there held that the right of action was controlled by the State and not by the maritime law,

since the blow was received on the wharf which was to be deemed an extension of the land.

And so in *Gonsalves* v. *Morse Dry Dock & Repair Company*, 256 U. S. 171, where an employee engaged in the repair of a vessel resting on a dock floating on navigable waters was allowed to recover for negligence of the vessel owner in the explosion of a blau torch negligently permitted to be out of repair. It was held that repairs to a vessel while in an ordinary dry dock were not made on land and that the admiralty jurisdiction in tort matters was settled by the locality.

In *Messel* v. *Foundation Co.*, 274 U. S. 427, it was held that a boiler maker employed to lengthen the smokestack on the deck of a vessel lying in navigable waters, and injured by negligence of the owner through the sudden burst of hot steam, was entitled to recovery in admiralty or under the saving clause of Section 256 by virtue of the Louisiana Civil Code, Art. 2315, declaring that every act whatever of a man that causes damage to another obliges him by whose fault it happened to repair it. This was held equivalent to the operation of the common law, and so under the saving clause of Section 256 to support a suit for damages either in admiralty or common law. The Louisiana Workmen's Compensation Act gave him no right of action.

We have thus examined all the cases in this Court since *Southern Pacific Co.* v. *Jensen* with respect to the efforts to apply the workmen's compensation acts in admiralty, and we have found nothing in them that would justify an award in the present case.

Here it is without dispute that the deceased was a sailor, that his employment and relation to the owner of the vessel were maritime. It is without dispute that the vessel in the navigation of which he was employed was registered as a vessel engaged in the navigable waters of the United States in the business of transporting people for hire. He was a skipper engaged in assisting the navigation of these registered vessels from their mooring place in Santa Monica Bay to the place where the deep sea fishing was to be carried on, a distance of from three to five miles or more, all in navigable waters. The vessels were capable of navigation for 500 miles. There was no feature of the business and employment that was not purely maritime. To hold that a seaman engaged and injured in an employment purely of admiralty cognizance could be required to change the nature or conditions of his recov-

ery under a State compensation law would certainly be prejudicial to the characteristic features of the general maritime law.

Objection is made that the deceased here lost his life by drowning when he was not on a vessel in the navigation of which he had been employed as a seaman. This is immaterial. He was lost in navigable waters. He was engaged in attempting to moor and to draw into a safe place the vessel with relation to which he was employed. It is clearly established that the jurisdiction of the admiralty over a maritime tort does not depend upon the wrong having been committed on board a vessel but rather upon its having been committed upon the high seas or other navigable waters. *The Plymouth*, 3 Wall. 20; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 59, 60.

Another objection to the admiralty jurisdiction here is that the vessel was not engaged in interstate or foreign commerce. It was employed only to run from shore to Santa Monica Bay, five or ten miles to the deep sea fishing place and then return, and all within the jurisdiction of California. This argument is a complete misconception of what the admiralty jurisdiction is under the Constitution of the United States. Its jurisdiction is not limited to transportation of goods and passengers from one State to another, or from the United States to a foreign country, but depends upon the jurisdiction conferred in Article 3, Section 2, extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

Mr. Justice Clifford, in *The Belfast*, 7 Wall. 624, 640, said:

"Difficulties attend every attempt to define the exact limits of admiralty jurisdiction, but it can not be made to depend upon the power of Congress to regulate commerce, as conferred in the Constitution. They are entirely distinct things, having no necessary connection with one another, and are conferred in the Constitution by separate and distinct grants." Citing *The Genesee Chief*, 12 How. 452. See also *In re Garnett*, 141 U. S. 1, 15; *Ex parte Boyer*, 109 U. S. 629, 632; *The Propeller Commerce*, 1 Black 574, 578.

Another objection which is pressed on us is that Section 256 of the Judicial Code does not exclude the jurisdiction under the California Compensation Act, because the object of the trips was for pleasure and not for commerce. This is a misconception. Commerce is not prevented because the object of it is to serve the

pleasure of passengers. The business was that of earning money by transporting people on the navigable waters of the United States, and, strictly speaking, it is just as much a part of commerce and of the admiralty jurisdiction as if these vessels were carrying cargoes of merchandise. *Gibbons* v. *Ogden*, 9 Wheat. 1, 215 *et seq.* The conclusion sought to be drawn by counsel for the Commission from the *Rohde* and other cases is that workmen's compensation acts will apply unless their application would interfere with the uniformity of the general maritime law in interstate and foreign commerce, and there is neither here. But this omits one of the grounds for making an exception—that it shall not be prejudicial to the characteristic features of the maritime law. That is just what it would be here, for here we have a transaction on the navigable waters of the United States which in every respect covers all the characteristic features of maritime law and has no other features but those. To apply to such a case a State compensation law would certainly be prejudicial to those features. We must hold therefore that it was a violation of the exclusive maritime jurisdiction conferred by the Constitution to apply in this case the California Compensation Act.

The judgment of the Supreme Court of California is

Reversed.

Mr. Justice BRANDEIS dissents.

A true copy.

Test:

Clerk, Supreme Court, U. S.